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SOLICITORS' JOURNAL

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CURRENT TOPICS

The February *Gazette*

THIS month's *Law Society's Gazette* provides an even more substantial and varied meal than usual. First, our views are invited within six weeks about the proposed amendment to r. 2 of the Solicitors' Practice Rules, the effect of which is to apply the full scale of conveyancing costs throughout the country subject only to limited exceptions. We doubt whether there will be any rooted objections. Secondly, the Council have revised their views about solicitors to associations or bodies which wish to provide some kind of legal advice service for their members. Although for the most part the new guidance appears to us to be sound in principle, we do not think it is feasible to ensure not only that "the advice is given through the appropriate officer of the association," but also that the officer in question "will be instructed not to disclose to the member seeking the advice the identity of the firm giving the advice." Again, we doubt whether many associations will be willing to take all the precautionary measures which the Council recommend. We think it is possible to exaggerate the importance of this matter and certainly laymen are often impatient and amused at our anxiety that no one of us shall have an unfair start. Thirdly, the Council invite members to send details of any hardship or difficulty which has arisen because more than thirty years have now elapsed since 1925, and thus the names of all estate owners against whom land charges may have been registered are not available. In our article at p. 61, *ante*, on the future of land registration we might have mentioned the conclusion of the Committee on Land Charges that the only policy they could recommend to deal with the problem of land charges was the extension of compulsory registration. The final matter, among several others, to which we would draw attention is that we are all bidden, in 1960, to the Annual Meeting of the American Bar Association in Washington and to the Commonwealth and Empire Law Conference in Ottawa. We hope that there will be a large temporary migration of solicitors across the Atlantic, although we doubt whether it will be as large as those in the other direction in 1955 and 1957.

Reports on Slaughterhouse Facilities

A FURTHER step in carrying out the procedure laid down by the Slaughterhouses Act, 1958 (described in an article at 102 SOL. J. 626), is marked by the making of the Slaughterhouse Reports (Appointed Day) Order, 1959, S.I. 1959 No. 172. This Order appoints 2nd November next as the

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earliest day by which local authorities may make their reports on slaughterhouse facilities to the Minister of Agriculture as required by s. 3 of the Act. These reports must be made during the twelve months beginning on that date, i.e., not later than 1st November, 1960, except where a later date is allowed by the Minister in any particular case. The Order applies to England and Wales excluding London. The purpose of the interval between 1st January, 1959 (when the regulations, S.I. 1958 Nos. 2168 and 2166, dealing with the construction, lay-out and equipment of slaughterhouses, came into force), and the earliest date by which a report may be made is to allow time for meat traders to formulate proposals—but not necessarily to carry out works—to modernise their existing premises or to build new ones. In making their reports local authorities will review the condition of the existing slaughterhouses in their districts and recommend a date which the Minister should later fix for the construction regulations to apply to all slaughterhouses in the district. Particulars of any existing premises which in their opinion are not capable of being brought up to the standard of the regulations and various other particulars will have to be included in the reports in accordance with directions to be issued by the Minister to the authorities. Copies of the report made for a district will have to be available locally for inspection for two months so that any representations may be made to the Minister. After the report for a district has been accepted by the Minister a new slaughterhouse licence for any premises not included in the report may not be granted unless the application is approved by the Minister.

Prosecutions for Riot

ALTHOUGH statistics confirm that the volume of crime in this country continues to increase, we may, perhaps, derive some measure of satisfaction from the knowledge that prosecutions for riot are now few and far between. However, the Romford magistrates were recently confronted with a case in which it was alleged that twelve youths armed, in the main, with bottles and wooden palings, rushed into a youth centre at Rainham "like troops going into battle." The youths were charged with the misdemeanour of causing a riot and were sent for trial at Essex Assizes. The essential elements of a riot, in the legal sense, were considered in *Field* v. *Receiver of Metropolitan Police* [1907] 2 K.B. 853, and, after an examination of many of the old authorities, Phillimore and Bray, JJ., found them to be: "(1) Number of persons, three at least; (2) common purpose; (3) execution or inception of the common purpose; (4) an intent to help one another by force if necessary against any person who may oppose them in the execution of their common purpose; (5) force or violence not merely used in demolishing, but displayed in such manner as to alarm at least one person of reasonable firmness and courage." This definition was approved and applied in *Munday* v. *Metropolitan Police District Receiver* [1949] 1 All E.R. 337 (the case where the actions of some forty or fifty would-be spectators at a football match between Chelsea and the Moscow Dynamos constituted a riot), but in *R.* v. *Sharp* [1957] 2 W.L.R. 472 (a case in which the Court of Criminal Appeal quashed a conviction of two men for making an affray), its validity was questioned in one respect. LORD GODDARD, C.J., took the view that "the fifth element referred to in *Field's* case may require reconsideration at some future time," and he also thought that "a riot may involve no noise or disturbance."

Murder in course of Theft

THE judicial interpretation of the provisions of the Homicide Act, 1957, is a matter of the greatest importance. It is, indeed, a matter of life and death and s. 5 (1) (*a*), which enacts that "any murder done in the course or furtherance of theft" shall be a capital murder, has already been examined by the courts on several occasions. It will be remembered that in *R.* v. *Vickers* [1957] 2 All E.R. 741, it appeared that the accused broke into a shop intending to steal money. While he was there the occupier of the premises, a woman of seventy-three years of age, discovered his presence and he struck her several times with his fists. The woman died of shock due to general injuries and the accused was found to have been rightly convicted of capital murder as, notwithstanding the abolition of "constructive malice" by s. 1 (1) of the Act, malice aforethought could be implied from the voluntary act of the accused inflicting grievous bodily harm on the deceased causing her death. The meaning of s. 5 (1) (*a*) was again considered by the Court of Criminal Appeal in *R.* v. *Jones* [1959] 2 W.L.R. 190; *post*, p. 133. The accused broke into a shop and took about £70 in cash from a safe. As he was leaving the premises the manager of the shop returned and the accused struck him a fatal blow. Was the murder committed "in the course or furtherance of theft," or was the theft complete before the murder was committed? The court decided that the conviction for capital murder should not be disturbed. In the course of his judgment LORD PARKER, C.J., applied and approved the finding of LORD SORN in *H.M. Advocate* v. *Graham* [1958] S.L.T. 167, that: "If a burglar is interrupted and if he murders in order to get away, it still is murder done in the course of theft."

Not the Way

THERE are, of course, several courses open to a person who has been charged with an offence. Apart from appearing in court, he may, in appropriate cases, take advantage of the procedure provided by the Magistrates' Courts Act, 1957, and have the matter disposed of in the absence of both the prosecutor and the accused. Again, he may choose to make his plea in a letter to the court and, however he decides to defend his good name, if the prosecution is unsuccessful and he is able to prove that it was brought maliciously and without reasonable and probable cause and that he has thereby suffered injury to his reputation, property or personal freedom, he may be able to maintain an action in tort for malicious prosecution. Most defendants find that one or more of these means enable the matter to be disposed of to their satisfaction, if not to their advantage, but a young labourer who had been charged with causing a nuisance in a railway station decided to deal with the summons in another way. He tore it up. While he was quite entitled to do this, he made the mistake of throwing away the pieces and he was charged, presumably under s. 1 of the Litter Act, 1958, with depositing litter in the street. The Bingham magistrates fined him £1 in respect of this offence. We do not imagine that this young man is the first person to have given vent to his feelings by destroying the summons with which he was served, but his unhappy experience may serve to warn others against scattering the pieces in "any place in the open air to which the public are entitled or permitted to have access without payment." As we said earlier, there are several ways open to a person accused of a criminal offence, but that chosen by the young labourer in question would seem to be one to be avoided.

COPYRIGHT, ROYALTIES AND TAX

THE House of Lords has now confirmed in *Carson* v. *Cheyney's Executor* [1958] 3 W.L.R. 740; 102 SOL. J. 955, that the royalties of authors, like other income assessed on the "receipts" basis, are not taxable after the discontinuance of the business or profession; and this is so whether the discontinuance be caused by death or retirement.

The general principle to be applied, if the taxpayer during his lifetime or during the life of the business or profession was assessed under Case I or Case II of Sched. D on the "receipts" basis rather than the "earnings" basis, was stated by Rowlatt, J., in *Bennett* v. *Ogston* (1930), 15 T.C. 374, at p. 378, in these terms: "When a trader (or professional man) dies or goes out of business . . . and there remain to be collected sums owing for goods supplied during the existence of the business or for services rendered by the professional man during the course of his life or his business, there is no question of assessing those receipts to income tax; they are the receipts of the business while it lasted, they are the arrears of the business, they represent money which was earned during the life of the business and are to be taken to be covered by the assessments made during the life of the business . . ."

This principle was approved by the House of Lords in *Stainer's Executors* v. *Purchase* (1951), 32 T.C. 367. In that case sums consisting of percentages or shares of the profits arising from the exploitation of films to the making of which Mr. Stainer had contributed his professional services as an actor or producer or director, and constituting his reward for those services, were received by his executors and were sought to be taxed under Case III or Case VI of Sched. D. The House held that the sums in question were not assessable under Case III or Case VI because they were nothing else than remuneration earned by Mr. Stainer in his lifetime, and must be taken to be covered by the assessments made "during the life of the business." Viscount Simonds said: "If in all the circumstances it was not possible to bring the sums into account in the years in which they were earned . . . the result is not to change the character of the payment, but to exhibit that some professional earnings may escape the income tax net." And the result would have been the same if the cessation of the profession had come about by voluntary retirement, or if the deceased taxpayer had left the United Kingdom to continue his profession in another country.

The "receipts" basis

On the receipts basis uncollected fees are ignored, the assessable profit being the excess of cash receipts over expenses actually paid out during the same accounting period. Accounts made up on this basis are usually accepted for professional businesses, if this has been the established practice in the particular case, but the earnings basis will be required at least for the opening years of a new practice (except in the case of a barrister who may adopt the receipts basis throughout), and on a partnership change in which election is made under s. 145 (1), proviso, of the Income Tax Act, 1952.

Some professions by their very nature can be taxed only on the receipts basis: since barristers cannot sue for their fees, they only earn what they are paid when they are paid; consequently, fees unpaid when they die or retire are not taxable. And the same rule applies to authors and dramatists whose prospective earnings it may be impossible to evaluate because of uncertainty as to the degree of popularity which a particular novel or play will achieve. Other instances of post-cessation receipts which are not taxable are payments under the participation agreements of leading actors and actresses, deferred remuneration of a similar kind accruing to singers and instrumentalists who make records for gramophone companies and to broadcasters in respect of repeat performances, and commissions paid to agents upon a contingency which they cannot control (see Final Report of the Royal Commission on the Taxation of Profits and Income, Cmd. 9474, paras. 253 to 264).

Peter Cheyney's case

During his lifetime, Peter Cheyney, the well known author of detective fiction, entered into four contracts (among others) with publishers. Three of the contracts related to books which had not then been written and as to which no copyright could be in existence. The fourth dealt with the exploitation in French of an existing work which was the subject-matter of copyright. Up to the date of his death, Mr. Cheyney was assessed to tax under Case II of Sched. D, but after his death the Inland Revenue sought to bring into charge to tax for the years 1951–52 and 1952–53, under Case III or Case VI, (i) royalties received by his executor under contracts made by Mr. Cheyney in his lifetime, and (ii) royalties received under contracts made by the executor. The General Commissioners confirmed the assessments made in respect of (ii) but discharged the assessments in respect of (i).

On appeal, the Crown contended that Mr. Cheyney as a writer produced a series of valuable incorporeal assets in no sense co-terminous with the lifetime of the exercise of his profession. What continued to bring in the royalties, it was said, was the exploitation of the right to publish after the professional activity had been discontinued. Also, what Mr. Cheyney had done was to enjoy income from property, for which contention reliance was placed on *Curtis Brown, Ltd.* v. *Jarvis* (1929), 14 T.C. 744; 73 SOL. J. 819, where it was held that royalties received by literary agents in respect of books written outside the United Kingdom were annual profits or gains arising from property in the United Kingdom and so were assessable to tax under Sched. D.

Harman, J., refused to accept these arguments. Very similar contentions were later put forward on behalf of the Crown in the Court of Appeal and were again rejected, though Jenkins, L.J., who delivered the judgment of the court, said: "We confess we regard this case as perhaps providing a somewhat stronger argument for the Crown than did *Stainer's Executors* v. *Purchase* [*supra*]."

In the House of Lords, Lord Simonds said that, in view of the decision of the House in *Stainer's* case, the Crown's argument could not succeed without a degree of refinement which was to be avoided in the realm of fiscal law, and he rejected a plea that the royalty payments could be regarded as income from property constituting a substantive subject-matter of taxation under Sched. D. During his lifetime the deceased taxpayer was consistently assessed on a form of receipts basis, being credited with royalties when they fell due for payment, and no account being taken of the present value of royalties due at a future date. Payments which were in historical fact the fruit or aftermath of professional activities did not change their taxable character when the profession was discontinued. An actor or author did not work for

contracts; he worked for money. The contracts were not the source but the instrument of their payment.

Contracts made by executors

As a general rule, profits arising from the realisation of assets, whether by a liquidator, executor or any other person, are not income profits unless, in the course of the realisation, the liquidator, executor or other person engages in trade: *Wilson Box* (*Foreign Rights*), *Ltd.* (*in liquidation*) v. *Brice* (1936), 20 T.C. 736; 80 SOL. J. 1034; *Evans Medical Supplies, Ltd.* v. *Moriarty* (1957), 37 T.C. 540; 101 SOL. J. 147.

In *Peter Cheyney's* case the executor did not challenge the finding of the General Commissioners that royalties arising under contracts made by him with publishers were taxable, as to which Lord Simonds observed that the executor "may have been right or wrong" in admitting his liability to assessment in respect of such sums. A leading case on the point is *Earl Haig's Trustees* v. *Inland Revenue Commissioners* (1939), 22 T.C. 725. In that case the trustees made available to Mr. Duff Cooper, who was writing a biography of the late Earl Haig, his war diaries, which were of unique importance and great value, in return for a sum which was not fixed but was calculated by a formula which in turn was related to the royalties received by the author. After use the diaries were to be handed over to some public institution for preservation.

The Commissioners found as a fact that the trustees did not carry on a trade or adventure in the nature of trade; and the Court of Session (First Division) held that the diaries were capital assets and that the trustees had realised some part of such assets (so far as the public interest permitted). The case thus shows, *inter alia*, that there can be a realisation of capital by parting with a right to use copyright as well as by parting with the property in copyright. And in *Nethersole* v. *Withers* (1948), 28 T.C. 501; 92 SOL. J. 193, Lord Greene, M.R., at 28 T.C. 512, said: "In the present case, whether the agreement operates as an assignment, or as a licence, the result is, in our opinion, the same . . . The agreement operates as a partial realisation of [Miss Nethersole's] capital asset, viz., the copyright in the play."

Resumption of activity after retirement

In *Nethersole* v. *Withers* Miss Nethersole was a well known actress and producer of plays who at one time had also been a dramatist, but had given up her vocation as such. Later she acquired the exclusive rights to dramatise Rudyard Kipling's novel, "The Light that Failed," which she did, as well as produce the play. When film rights acquired a commercial value it was agreed that Miss Nethersole should have one-third of any sum for which such rights in the novel or play might be sold. An American company acquired the comprehensive film rights in both novel and play, including, *inter alia*, the right to adapt and change the play and combine it with other works, for a lump sum payment of which Miss Nethersole's share was £2,666.

The Special Commissioners found that she was not carrying on a profession or vocation at the material times covered by the assessments made upon her in respect of the dramatic and film rights in the novel.

In the House of Lords it was held that the nature of the rights for which a sum is paid is a factor, and often the deciding factor, in considering whether the sum is of a revenue or a capital nature. A sum calculated by reference to the number of performances of a play, or a percentage of receipts, is a royalty and is taxable as revenue; and so is a sum built up or arrived at by reference to a minimum or an estimated number of copies of a book sold. But what Miss Nethersole was paid for, among other things, was the right to cut her play to pieces and to combine the work with other works—a right which, whether it was exercised or not, diminished the value of the copyright in the play. The agreement with the American company operated as a partial assignment of the copyright in the play (not as a licence), but in either event involved the surrender of a capital asset in consideration of a sum which was paid without reference to any "anticipated *quantum* of user." Accordingly, the payment of £2,666 was not taxable.

Isolated works

Where a person writes an isolated novel or play, or his activities in the field of authorship are insufficient to constitute a profession or vocation, he may be assessed under Case VI of Sched. D, as an alternative to an assessment under Case II; or the payments which he receives may, in certain circumstances, be assessed as "annual payments" under Case III.

In *Beare* v. *Carter* (1940), 23 T.C. 353; 84 SOL. J. 551, a King's Counsel was the author of a history of the English courts of which five editions had previously been published. He received from his publishers a lump sum of £150 for the granting of a licence to publish a sixth edition, the copyright being retained by him. The Commissioners found the £150 to be a capital payment received by a person who was not carrying on the profession or vocation of an author, and the court upheld their decision. In the case of a professional author or dramatist, on the other hand, not only profits from royalties but lump sums received in commutation of royalties and lump sums received for the outright sale of copyright are taxable: *Billam* v. *Griffith* (1941), 23 T.C. 757; 85 SOL. J. 368; *Glasson* v. *Rougier* (1944), 26 T.C. 86. Much depends, therefore, on the Commissioners' finding of fact as to whether or not the taxpayer is carrying on the vocation of a writer or dramatist; and secondly (in the event of a negative finding) upon the method selected of turning the copyright which has been created to financial account.

Annual payments

A case in direct contrast to *Nethersole* v. *Withers*, *supra*, is *Mitchell* v. *Rosay* (1954), 35 T.C. 496; 47 R. & I.T. 508, where the taxpayer acquired exclusive rights to exploit films in the United Kingdom and elsewhere for £1,000, the receipts from the exploitation to be divided equally between herself and the vendor, but she being entitled to reimburse herself out of the vendor's share for the £1,000 she had paid to him. Later she entered into a second agreement with a company to which she granted the rights she had acquired under the first agreement. Under the second agreement (after deduction of the £1,000) the gross receipts were to be shared as to 30 per cent. by the company and as to 70 per cent. by the taxpayer. Her share of the receipts was held to be taxable as "annual payments" under Case III of Sched. D.

Wynn Parry, J., who gave judgment in the case, remarked significantly: "The taxpayer had complete choice between exploiting her rights acquired under the first agreement in such a way that she would receive a capital sum; or exploiting them in such a way that she would receive an income profit." She had chosen the latter method and the receipts were taxable in her hands notwithstanding that there was no question of her having carried on a business so as to be assessable under Case I. And in *Carson* v. *Cheyney's Executor*, *supra*, Lord

Reid said: "Where the author sells his copyright . . . the fees which the purchaser gets from granting licences to publishers are from the beginning taxable as annual payments to him irrespective of whether the author is still practising his profession." If, therefore, tax is to be avoided in the case of a person not carrying on the profession or vocation of an author or dramatist, or the business of exploiting film rights, the outright sale of the copyright, or the assignment, or even the licensing of the whole or part of the copyright for a *capital* payment becomes of paramount importance.

Conclusion

In *Housden* (*Inspector of Taxes*) v. *Marshall* [1959] 1 W.L.R. 1; p. 16, *ante*, Harman, J., held that there is no copyright in the "reminiscences" of a notable person written up for a newspaper by a "ghost" writer—the copyright being vested either in the writer or the newspaper. In *Hobbs* v. *Hussey* (1942), 24 T.C. 153, however, where the reminiscences were actually written by the person concerned, it was held that the sale of the copyright was subsidiary to the performance of services which were in their essence of a revenue nature.

But where copyright is actually created and the taxpayer is not carrying on the profession or vocation of an author or dramatist, a survey of the decisions of the courts points unmistakably to the necessity of giving very careful thought to the tax implications of any proposed transaction for turning copyright to account, which may well outweigh any individual preference on the part of the owner of the copyright for a series of income payments. And it should also be borne in mind that a finding of fact by the General or Special Commissioners will not be upset by the court (even though the court itself might have reached a different conclusion on the facts) unless there is no evidence to support the Commissioners' findings or a misconception of law has been responsible for the particular determination of fact: *Edwards* v. *Bairstow and Harrison* [1956] A.C. 14; 99 SOL. J. 558. This situation makes it doubly desirable that all relevant facts in support of an appellant's case before the appeal Commissioners should be brought out in evidence.

K. B. E.

THE MENTAL HEALTH BILL—II

ALTHOUGH the Bill will greatly change the means of admission and discharge of mental patients, it proposes nothing vitally new for the care of the patients who are detained in hospital. Among minor provisions are those for leave of absence from hospital (cl. 39) and for a patient's own doctor to visit him and examine him in private (cl. 37). A new criminal offence is created by cl. 126: it will be an indictable offence for a male member of the medical or lay staff of a hospital to have unlawful sexual intercourse with a female patient, or for a man to have such intercourse with a woman entrusted to his guardianship. There is also a rather dubious clause (36) giving power to a responsible medical officer to censor the correspondence of patients under his care; the Royal Commission recommended that there should be discretion to withhold incoming letters from patients if the medical staff thought that they might have a harmful effect, but to allow censorship of outgoing letters seems to be giving altogether too much power to the medical authorities.

The management of patients' property and affairs is only to be subject to minor changes: the Court of Protection will continue—but it is to be hoped that some future Lord Chancellor will revise the scale of fees paid to solicitors for this work—and the Lord Chancellor's Visitors are to be given a new lease of life.

Criminals into patients

The most revolutionary changes proposed by the Bill are those in Pt. V which contains, in the words of the heading, "Provisions for compulsory admission or guardianship of patients convicted of criminal offences, etc." Powers are to be given (cl. 59) to courts of assize and quarter sessions, and to magistrates, to order the admission to hospital or guardianship of a convicted offender if the court is satisfied, on the evidence of two medical practitioners, that the offender is suffering from mental illness, psychopathic disorder or subnormality of a degree requiring hospital treatment or guardianship, *and* if the court is of the opinion, having regard to the nature of the offence, the offender's antecedents, and other available methods, that such an order is the most suitable method of disposing of the case. Such a "hospital order" or "guardianship order" may be made by magistrates only where the offence is one which is punishable with imprisonment on summary conviction; but if the magistrates are satisfied that such an offence has been committed they can make a hospital or guardianship order without convicting the prisoner if he is suffering from "mental illness or severe subnormality" (psychopaths and the merely subnormal are excluded from the provisions of this clause for some reason).

The medical evidence may be oral or in writing, but one of the doctors must be approved by a local health authority as having special experience in mental disorders. There need be no proof of the doctor's qualifications if the request is in writing, but the accused may demand that the medical evidence be given orally, and he may call rebutting evidence. No hospital order may be made unless the court is satisfied that arrangements have been made for the admission of the offender within twenty-eight days to the hospital specified in the order. During the interim period the court may order the offender to be detained in "a place of safety" until he can be admitted to hospital; if admission to the specified hospital proves to be impossible the Minister may order admission to another hospital.

Restriction orders

Under a hospital or guardianship order made pursuant to cl. 59 a patient can be discharged in the same way as a patient admitted under an application for admission (see p. 100, *ante*), except that the nearest relative cannot exercise the power of discharge; in other words, either the managers of the hospital or the responsible medical officer can let him go at any time, or the patient himself may apply to the Mental Health Review Tribunal. In effect this gives the managers and the doctors in charge of the offender the power to determine precisely the period of his detention, a power which may be quite properly reposed in them in cases of minor aberrations, but one which would place an intolerable responsibility on them where serious offences had been committed. Clause 64, therefore, gives to courts of assize and quarter sessions the power to make a further order that the offender shall be

subject to special restrictions, either for a specified period or without limit of time. Such a "restriction order" may not be made unless at least one of the medical witnesses gives oral evidence. The effect is to vest all power to discharge the offender in the Secretary of State: even the right to apply to the Mental Health Review Tribunal is taken away, but the Secretary of State may at any time refer to a tribunal for advice on the case of an offender subject to a restriction order.

A magistrates' court may not make a restriction order, but where the court thinks such an order desirable the offender may be committed in custody to quarter sessions, or he may be admitted to the hospital specified by the medical witnesses and detained there until his case is disposed of by quarter sessions.

Appeal from a hospital or guardianship order, or a restriction order, is to the Court of Criminal Appeal or, in the case of magistrates' court decisions, to quarter sessions, and any appeal will be treated as being against both conviction and sentence.

Hospital or prison?

The idea of treating offenders instead of punishing them is attractive to all who believe that every human soul is redeemable, although it may not always be a practical possibility; but when there is evidence that the offence was directly caused by a mental disability which is susceptible to treatment, the punishment of the offender must cause revulsion in anyone with a germ of human sympathy. All that Pt. V of this Bill does is to give practical expression to these emotions, and therefore it would seem, on the face of it, to be an essential and long-delayed piece of legislation. But unfortunately the picture is not as clear as might at first appear. It can be argued that all "criminals"—indeed, all of us when from time to time we act in an anti-social manner—are mentally ill, and that there should therefore be no punishment for wrong-doing, only treatment; but while Society persists in classifying at least some miscreants as criminals, where is the line to be drawn, and who will draw it? The Bill draws the line at "suitability for treatment," and gives the court the power to draw it, with the assistance of medical science, which seems to be a sensible compromise. But where are these offenders, or patients, to receive their treatment? As the Bill is silent on this point, it must be assumed that any hospital will be acceptable, provided that "arrangements have been made for the admission of the offender to that hospital." There's the rub. General hospitals are not likely to throw open their doors to the mentally ill, and since the all-round improvement in mental hospitals there has been such an increase in the pressure on their accommodation that there is overcrowding and shortage of staff almost everywhere.

There will therefore be the initial difficulty of finding a medical officer who is prepared to come to court and say that he can make available a bed in a mental hospital to *someone who has been convicted of a criminal offence*. Such a patient will in most cases be a psychopath or subnormal, and one must consider the practical problems of admitting such patients to ordinary mental hospitals. Dr. Atkins, the physician-superintendent of Park Primett Hospital, said in a recent lecture (published in the *British Medical Journal*, 31st January, 1959, at p. 293) that the admission of psychopaths to ordinary mental hospitals is to be avoided: out of hospital, the psychopath is restrained to some extent by the fear of punishment, but when this discipline is removed it is difficult to prevent him from making a thorough nuisance of himself; if he refuses to get up, goes out and gets drunk, pesters the women patients, or steals from lockers, the only remedy is to discharge him, and if he were subject to a restriction order this could only be done with the consent of the Secretary of State. Dr. Atkins said that some psychopaths have become expert in the procedures of admission and discharge, using the mental hospital as a comfortable hotel when life becomes too difficult outside. It is obvious that no medical superintendent of a mental hospital who has his wits about him will agree to provide accommodation for a patient who may turn out to be quite uncontrollable in the modern mental hospital, with its stress on freedom of movement and minimum of discipline, and who will probably have a most unsettling effect on the other patients.

This is not to suggest that psychiatrists have not, on the whole, welcomed the Bill; it seems to be the general view that the provisions regarding classification, admission and discharge will lead to a steady improvement in the lot of the mentally sick, but they have serious reservations about the value of the clauses relating to treatment of criminals. The medical superintendent of one large mental hospital described this part of the Bill as a piece of noble but impractical idealism: noble, because he believes that many offenders would benefit from hospital psychiatric treatment and he would like to take part in their reclamation; impractical, because his hospital is already crowded beyond the capacity of both the buildings and the staff and he knows that they could only take on the extra burden with a heavy expenditure of public funds, even if sufficient trained staff were available.

The only answer to this problem seems to be the provision of special units for the detention of such offenders, and would not these be prisons by another name? Perhaps if enough money could be spent on them and if there were enough trained psychiatrists and psychiatric nurses available, such units could serve a useful purpose, but their provision must stand a very long way down in the list of urgent calls on hospital expenditure.

One law for the rich . . . ?

Another possible criticism is that the provisions regarding hospital treatment would appear to be heavily loaded in favour of the offender who has ample means. One only has to consider the example of the genuine sexual pervert; while the ordinary man might find it difficult to produce two medical witnesses, one a psychiatrist, to say that he was suited to hospital treatment, and more particularly to find a hospital willing to admit him, the wealthy man would be able to call as witnesses psychiatrists of the highest standing who could probably find accommodation for him as a paying patient in their hospitals. It is no criticism of the doctors to say that the wealthy man would have a great advantage over the ordinary National Health Service patient in respect of these hospital orders; it would seem to be an inevitable result of diverse economic pressures.

What will be the attitude of the courts?

In spite of these criticisms, the Bill's general aim—to give treatment instead of punishment whenever it can be justified—is a noble one and it should be welcomed as a great step on the road to penal reform. But much will depend on the enlightenment of judges, chairmen of quarter sessions and magistrates. If they set their faces with determination against any liberalisation of the punishment of the more unfortunate classes of criminals, they need never make an order for hospital treatment or guardianship, since there is

a threefold discretion under cl. 59: the court must be "satisfied" that the offender is suffering from a mental condition suitable for treatment; must be "of opinion" that such an order is the most suitable method of dealing with the case; and finally "*may* by order authorise" detention in hospital or under guardianship. The present attitude of the courts to the provisions of s. 4 of the Criminal Justice Act, 1948, may, or may not, be an indication of what would happen if this Bill were to become law. As was said in a previous article (at 101 SOL. J. 508), a prisoner cannot hope for an order under that section unless he happens upon the right judge, the right psychiatrist and the right legal advisers at one and the same time. Under the present Bill he will need to find the same happy combination, except that there will now have to be *two* right psychiatrists. But one must not be too pessimistic; if legislation is sometimes ahead of public opinion, it may on occasion also influence judicial attitudes, even in the difficult field of penal reform.

MARGARET PUXON.

[Concluded]

A Conveyancer's Diary

THE DESERTED WIFE'S EQUITY AGAIN

IN *Thompson* v. *Earthy* [1951] 2 K.B. 596; 95 SOL. J. 531, a husband deserted his wife, leaving her in occupation of what had up till then been the matrimonial home. He then sold the house to a purchaser for a valuable consideration. In an action for possession of the house against the wife it was held that, on proof of his title, the purchaser was entitled to an order for possession. In the course of his judgment, Roxburgh, J., said this: "The real question is whether or not the wife has any legal or equitable interest in the premises which runs with the premises so as to bind them in the hands of a purchaser. I have never heard of, and no authority has been cited to me which suggested that there is, any estate or interest in land of this character." That was a plain enough pronouncement, and the decision was quite general. It had been suggested on behalf of the wife that the purchaser or the purchaser's solicitors had notice of the desertion at the time of the purchase. This was not admitted, but having regard to the way in which the case was decided the question of knowledge or notice was immaterial. The deserted wife had no rights against a successor in title of the husband, or at least a successor for value, and that was that.

Recantation of views expressed in *Thompson* v. *Earthy*?

That was before *Bendall* v. *McWhirter* [1952] 2 Q.B. 466; 96 SOL. J. 344, and the many cases on this point reported in the half decade that followed that decision. Now the same point has once again come before Roxburgh, J., with a twofold result. One is a very careful examination of the reasoning in *Bendall* v. *McWhirter*. The other is or appears to be a recantation of the views expressed in *Thompson* v. *Earthy*. Or is it? For the recent decision (*Churcher* v. *Street* [1959] 2 W.L.R. 66; p. 55, *ante*) was founded on a very far-reaching admission by counsel for the plaintiffs (the successors in title of the deserting husband) who conceded that in the court of first instance, and in that court only, the deserted wife had in respect of the matrimonial home an equity which was valid against a purchaser for value of the matrimonial home who had knowledge that she was a deserted wife. (The word "knowledge" here should be noted. In comparing the facts of the present case with those in *Jess B. Woodcock & Sons, Ltd.* v. *Hobbs* [1955] 1 W.L.R. 152; 99 SOL. J. 129, the learned judge observed that in that case the plaintiffs had constructive notice only of the desertion and not knowledge, and went on: "I think it is fair to say that that was itself one of the circumstances which was taken into consideration, but I do not understand it to be suggested that because the plaintiffs here had knowledge and not merely constructive notice they are not entitled to invoke the theory that it is for the court to exercise its discretion.")

Churcher v. *Street*

In *Churcher* v. *Street* the bare facts were that the husband after he had deserted his wife conveyed the matrimonial home, which the wife had continued to occupy, to a purchaser for value. (The purchaser was the husband's mistress, but this was not material in this case: it was not suggested that this transaction had any collusive flavour, as had been suggested in certain earlier cases, e.g., *Ferris* v. *Weaven* [1952] 2 All E.R. 233; 96 SOL. J. 414.) Part of the purchase price was raised by the mistress on the security of a legal charge of the house to the plaintiffs. The interest under the charge fell into arrear, and the plaintiffs applied for an order for possession under R.S.C., Order 55, r. 5A, joining the mistress (who did not appear or defend) and the deserted wife as defendants. An order for possession in six months was made.

The last word on this subject, Roxburgh, J., said, had been said in the *Woodcock* case, and he referred extensively to the judgment of Denning, L.J. (as he then was), in that case, in which the existence of a discretion in the court capable of being exercised to give the deserted wife some right of possession against a successor in title of the husband was explicitly recognised. (This discretion, it will be recalled, was founded on the disability of a husband to sue his wife for possession, i.e., in tort, which leaves to a husband who wants possession of the matrimonial home only the procedure under s. 17 of the Married Women's Property Act, 1882, itself subject to a statutory discretion.) Roxburgh, J., then went on to say (and I will again cite the learned judge's own words, for they seem to me to contain the crux of the decision): "If, when I decided *Thompson* v. *Earthy*, I had thought of the possibility of some such transaction as was carried out in this case as between the husband and the deserted wife, I should have given further reflection to the case, and I can well understand that if the courts had not intervened to prevent those kinds of transactions, Parliament would have intervened. It would have been an advantage, in my view, if Parliament, rather than a higher court, had intervened, because, in order to prevent certain cases of injustice to deserted wives, a position has been brought about which may produce considerable injustice to other people unless each case is brought before the courts, which is a course involving considerable expenditure." That is, of course, rather a far cry from *Thompson* v. *Earthy*. But whereas in that case "no authority

had been cited . . . which suggests that there is any estate or interest" in the deserted wife, by the time that *Churcher* v. *Street* fell to be decided there had been *Bendall* v. *McWhirter et hoc genus omne*.

Important feature of *Churcher* v. *Street*

The further details of the recent case, those which went into the way in which the judicial discretion which was recognised (not, I think on the whole, only as a matter of concession on the part of the plaintiffs) to exist should be exercised, are of no general interest. The important feature of the case lies in this recognition that the process of judicial legislation which started with *Bendall* v. *McWhirter* is now completed, or at least as completed as any such process can be when the point has not yet been considered in the highest tribunal. In acting for a purchaser of residential premises, therefore, it is absolutely necessary either to provide in the contract that vacant possession shall be given on completion, so that if the premises are then found to be occupied by a deserted wife the purchaser can resile, or to raise a specific requisition designed to elicit the answer that there is no person who has any title, legal or equitable, to remain in occupation of the premises after completion. The former course is a matter of routine on a purchase. It is when advising and acting for a mortgagee, not normally concerned with immediate possession, that the point can be overlooked.

One final point may be made on this recent decision. It was held in *Westminster Bank, Ltd.* v. *Lee* [1956] Ch. 7; 99 Sol. J. 562, that the title of a deserted wife to continue in occupation of the matrimonial home constituted a mere equity and not an equitable interest. This is an important distinction where the plaintiff's own title is an equitable one, as the decision in that case showed, and the distinction has not in any way been affected by *Churcher* v. *Street*.

"A B C"

Landlord and Tenant Notebook

DENIAL NO DISCLAIMER OF TITLE

"Never since feudal times has a denial of title by itself given rise to a forfeiture until *Kisch* v. *Hawes Bros., Ltd.*, in 1934" indicates, in my submission, the *ratio decidendi* of Lord Denning's judgment in *Warner* v. *Sampson* [1959] 2 W.L.R. 109 (C.A.); p. 91, *ante*, reversing that of Ashworth, J., reported in [1958] 2 W.L.R. 212; 102 Sol. J. 107.

The facts of that case, which the "Notebook" discussed in the course of an article on "Feudal Incidents" on 4th January, 1958, and to which it devoted a further article on 8th February of that year (102 Sol. J. 8 and 100), were, briefly, that in the course of an action for forfeiture for disrepair a defence was delivered concluding with: "Save and except for the admission herein contained this defendant denies each and every allegation in the statement of claim as if the same were specifically set out and traversed *seriatim*." Whereupon the plaintiff, in her reply, claimed forfeiture on the ground of denial of her title; and Ashworth, J., held that she was entitled to possession on that ground.

Most of Lord Denning's judgment is devoted to a very thorough survey of the history of this ground of forfeiture. In feudal times a lord allotted a feu or fee to a tenant and the tenant swore fealty; doing anything to impair the title of the lord was a breach of that oath and gave rise to a forfeiture. Among such acts there was a disclaimer by matter of record, a plea that the tenant did not hold of the said lord the land aforesaid "but the same to hold of the said lord altogether disavows and disclaims." This plea, entered with a view to avoiding services which the tenant was liable to perform, entitled the lord to forfeit: the tenant was not defending the reversion as he ought to; he was claiming the fee simple to be in himself or in another. And the rules were extended to cover tenants for years—but *Sir William Felham's Case* (1590), 16 Rep. 14*b*, was the last recorded case of such a forfeiture until *Kisch* v. *Hawes Bros., Ltd.* [1935] Ch. 102 applied the rule some three hundred years later.

The reasoning proceeds: "All the circumstances which gave rise to this mediæval law have now disappeared. A tenant for years does not owe homage to his landlord. He does not take an oath of fealty. He is under no duty to defend the interest of the reversioner. His rights and duties are defined by the lease. . . ." And Lord Denning invoked the words of Lord Atkin in *United Australia, Ltd.* v. *Barclays Bank, Ltd.* [1941] A.C. 1: "when these ghosts of the past stand in the path of justice, clanking their mediæval chains, the proper course for the judge is to pass through them undeterred."

Lord Denning also considered that even if the mediæval law were revived it would not entitle the landlord to forfeit, because a general denial only put him to proof, and did not affirm the fee to be in the defendant or a stranger.

As the other members of the court, Hodson and Ormerod, L.JJ., took a different line when agreeing to remit the case, it may be convenient to discuss Lord Denning's judgment at this point.

"Cessante ratione cessat lex"

The main ground of the judgment applies the above maxim; and the comment which suggests itself is that it is a useful maxim when an Act of Parliament has to be interpreted (see Maxwell, Intérpretation of Statutes, 10th ed., pp. 44–45), but that its application to a common-law rule places difficulties in the path of a legal practitioner. When is it safe to advise a client that a rule of law has lost its force because conditions which led to its creation no longer obtain; how is one to recognise a ghost or know when to advise that the spectre is standing in the path of justice? One is often confronted with law which may well be considered obsolete (recently, in the House of Commons, a member mentioned that certain legislation was twenty years old as if that were in itself a demerit); and, while one may agree that the forfeiture on the ground of denial of title rule, based on the "allegiance attracts protection, protection attracts allegiance" principle, discussed in the "Notebook" for 4th January, 1958, affords a very striking instance of the need for revision, Lord Denning does, if I may respectfully say so, rather overstate the case when saying that the tenant is under no duty to defend the interest of the reversioner and that his rights and duties are defined by the lease. One recalls, besides numerous Acts of Parliament by which such rights are either made unenforceable or modified, the enactment contained in the Law of Property Act, 1925, s. 145—hardly a mediæval statute—

obliging every tenant to notify his landlord of any writ for the recovery of the premises of which he has knowledge: sanction, forfeiture of the equivalent of three years' improved or rack-rent (three peppercorns cannot suffice). A twentieth-century Parliament having refrained from laying this ghost, are our judges to pass through it undeterred?

The other ground recalls Ashworth, J.'s own objection to the use of the word "disclaimer" in the court below, and Tindal, C.J.'s statement in *Doe d. Williams and Jeffery* v. *Cooper* (1840), 1 Man. & Gr. 135: "A disclaimer, as the word imports, must be a renunciation by the party of his character of tenant, either by setting up title in another or by claiming title in himself." Lord Denning did not refer to this authority; it was later cited by Hodson and Ormerod, L.JJ., who quoted from a different report, that of 1 Scott N.R. 36, which attributed more emphatic language to Tindal, C.J.: instead of "setting up title in another, or by claiming it in himself," we find "setting up the title of a rival claimant, or by asserting a claim of ownership in himself." Another report, that in 9 L.J.C.P. 229, agrees with this one. This, I would submit, is a rather more satisfactory way of disposing of the matter than the "merely putting to the proof" point, or the hair-splitting argument that "denying" is the same thing as "not admitting."

No re-entry

Hodson and Ormerod, L.JJ., were both in favour of treating "deny" as the equivalent of "do not admit," so that there was no renunciation of the plaintiff's title; but both had a further criticism to make of the judgment (and of that in *Kisch* v. *Hawes Bros., Ltd.*): that there had been no re-entry, and that the amendment of the defence had made it impossible for the plaintiff to enforce the forfeiture if he had been otherwise entitled to enforce it.

The Law of Property Act, 1925, s. 146, restrains a landlord from exercising a right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of covenant or condition in the lease, by action or otherwise; the "or otherwise" prohibits actual re-entry, but the "proviso or stipulation in a lease for a breach of covenant or condition *in the lease*" would not extend to what Bacon's Abridgment (Dodd's edition, vol. IV, 884), when describing the effect of renunciation, calls a condition tacitly annexed to every lease. And, if we are dealing with mediæval law, it may be hard to imagine that a fourteenth-century baron whose tenant's reaction to the equivalent of calling-up papers was a disavowal or disclaimer of his lord's title would necessarily take legal proceedings. There is, however, authority for the proposition that a writ of right for disclaimer was at least a proper course: in Finch in his Law, chap. VI, p. 271: "and if in this writ of right for disclaimer he can prove the land to be holden of him, he shall recover the land itself, for ever; because the disclaimer is of record."

This would afford some support for the proposition that, when the advisers of the plaintiff in *Warner* v. *Sampson* had noticed the general traverse at the end of the defence, and had delivered a reply pleading: "The plaintiff hereby exercises her right to forfeit the said term, and claims to be thereby entitled to re-enter upon the said premises," this did not "complete the re-entry," and did not entitle her to judgment. Hodson, L.J., referred to Warrington, J.'s exposition of the law in *Moore* v. *Ullcoats Mining Co., Ltd.* [1908] 1 Ch. 575, in which older authorities were cited; and it was, apparently, conceded that the insertion of the plea in the reply was not even the equivalent in law to re-entry; it was a mere notice of intention. One would have thought it arguable that, in so far as election is a requirement, it was clear enough; and the concession was coupled with a contention that it would still be open to the plaintiff to issue a further writ. This raised the question of the effect of the amendment of the defence which had been granted and acted upon by delivery of an amended defence.

Amendment

As mentioned in the "Notebook" for 8th February, 1958, Ashworth, J., had held that the plaintiff's right had crystallised when the defendant had denied the lease, and amendment could not help the latter (though the learned judge appears to have considered that a leave to withdraw the defence might have availed). Hodson and Ormerod, L.JJ., did not agree with this view. The defence was, the former pointed out, amended before judgment was given, and thus that part of the pleading which was said to have caused the forfeiture was removed; what had stood before the court before amendment no longer stood before it. According to the latter, the issue of a writ for possession before the amendment of the defence might, as regards that point, have made the position different.

Effect

I would conclude by observing that *Wisbech St. Mary Parish Council* v. *Lilley* [1956] 1 W.L.R. 121 (C.A.); 100 Sol. J. 90—mentioned only by Ormerod, L.J., and by way of illustration—is still good law; thus, in Lord Denning's "Never since feudal times has a denial of title by itself given rise to a forfeiture until *Kisch* v. *Hawes*," the "by itself" is important. For the defendant in that case had been let into possession by an aged and infirm yearly tenant of a cottage paying a rent of 10s. a year, who had told a solicitor acting for him and the defendant that he had agreed to sell the cottage to the defendant for £20; as he produced no deeds the solicitor drew up an agreement describing the subject-matter as "all that the interest of the vendor in the cottage." Dismissing an appeal, Evershed, M.R., said that it was by no means clear that this was a transaction *aimed* at enabling the defendant to set up a title adverse to the true owner; Romer, L.J., had no doubt but that this old gentleman had no such intention in his mind at all. That was a case of alleged repudiation or denial of title by letting a stranger into possession, and not a case of disclaimer by matter of record; but one can take it from the judgments (particularly that of Romer, L.J.) that a deliberate assertion, by a tenant, of a title in himself adverse to his landlord will still entitle a landlord to forfeit. The law, it was said in that case, was archaic in some degree and founded on feudal principles which do not certainly loom very large in modern life; but no suggestion was made that if they did loom they should be ignored.

R. B.

Mr. Gordon Harrison, assistant in the Magistrates' Clerks' Office, Warminster, has been appointed Senior Assistant in the Justices' Clerk's Office for the Cheltenham and Tewkesbury Petty Sessional Division in Gloucestershire.

His Honour Judge Malcolm Wright, Q.C., will cease to be one of the Judges for the district of the Croydon County Court and will become one of the Judges for the districts of the Westminster and Aylesbury County Courts (Circuit 44).

HERE AND THERE

URN BURIAL TO-DAY

In that endowed museum of twentieth-century behaviour patterns, the Divorce Court, there has just appeared a most remarkable exhibit, which might well form the subject-matter of a new and entirely original treatise on Urn Burial. Would that Sir Thomas Browne were alive to compose this addendum to his original work, he who wrote: "Man is a noble animal, splendid in ashes and pompous in the grave." The problem raised was two-fold: the one legal, the other philosophical. The legal problem the learned judge solved succinctly, as became his office; the philosophical problem he wisely left aside. His solution of the legal problem one might record as follows if one were writing the headnote of a law report: "*Held* that for a wife to keep in a sideboard an urn containing the ashes of her first husband does not amount to cruelty to her second husband." The law being thus settled, whoever henceforth marries a widow will know precisely what his rights are not in that respect. One is left wondering how many of the inhabitants of this island will eagerly peruse this decision with a personal practical interest. But before pursuing the matter any further it is essential to set out the facts as reported in the daily newspapers. In a sideboard a policeman's widow, who had married a second time, kept an urn containing her first husband's ashes. Her second husband, according to his evidence, protested again and again because food was also stored there, but his wife refused to move the urn. She, however, denied there was anything more than a trivial conversation about the urn, saying her husband disposed of it as soon as he saw it. First the ashes were removed to a bureau in his workshop; later he threw them into the coal cellar.

FOR FUTURE PHILOSOPHERS

To this set of facts the philosophers of a future age will look back with the liveliest intellectual curiosity for the light they throw on the beliefs and burial customs of the mid-twentieth-century English, beliefs and customs fascinatingly unlike anything that has gone before. They would readily understand, as all thoughtful men must understand, the attitude that the old body from which the life has departed (whether into eternal beatitude or into nothingness) is of no more value than an old hat, a discarded remnant to be swept up like nail clippings or hair clippings, if need be into the coal cellar. But then, why, they will ask in perplexity, the mysterious interlude of the urn and the sideboard? Those scholars of the future in the light of the great popular instincts of mankind will understand all about the preservation of honoured relics, the public or the domestic shrine, the ashes of our fathers and the temples of our gods, but the state of mind symbolised in this particular mode of preservation may well elude them as the mode of cremation of the millionaire eluded G. K. Chesterton when he wrote of two sorts of paganism:—

> "If I had been a heathen, I'd have built my pyre on high,
> And in a great red whirlwind gone roaring to the sky,
> But Higgins is a heathen and a richer man than I
> And they put him in an oven, just as if he were a pie."

Perhaps in the conjunction of the sideboard with this twentieth-century urn burial, the inquiring scholars will think to find a clue in another ancient human instinct, that of grave foods, the leaving of food and drink beside the remains for the use of the departed spirit in his journey to the other world. This too is an ancient and a sacred tradition, known and honoured in remote continents and in remote antiquity and piously practised by our own ancestors. We need go no further than Maiden Castle in Dorset and the burials of those Britons who died defending it against the invading Romans. Here lies one holding a leg of lamb, another a forequarter of lamb, another a leg of mutton; others, characteristically, lie with their drinking pots. In its primitive simplicity this is one of the most touching of war cemeteries.

PUZZLE FOR ARCHÆOLOGISTS

But here again the archæologists of the future, with the passion of learned men for rationalising the behaviour of strangers in time and culture, will run across another difficulty—the husband's protest that the ashes should have been deposited in a place where food was kept and the reply that only a trivial conversation ensued. Still failing in their attempts at rationalisation, they will no doubt shake their heads and fall back on some vague generalisations about tribal taboos. Conjugal jealousy at the enthronement of a dead predecessor, in the manner of the enthronement of the skeleton of Jeremy Bentham in London University, would, no doubt, be a motive that they could understand, just as they would understand the enthronement itself, for both would echo ancient recognisable human instincts. But such a preservation, met, apparently, by an objection merely hygienic, is so essentially local and limited that the atmosphere in which the combination of the two was possible may well pass utterly from the memory of man far sooner than we now imagine. The situations with which the judges are currently called on to deal often suggest a philosophical vacuum. It will make their judgments difficult reading for posterity.

Richard Roe.

OBITUARY

Mr. G. V. H. CLAYTON-SMITH

Mr. Guy Vernon Heukensfeldt Clayton-Smith, solicitor, of Pontefract and Hemsworth, died on 6th February, aged 70. He was admitted in 1919.

Professor R. C. FITZGERALD

Professor Richard Charles Fitzgerald, solicitor, Professor of English Law in the University of London, at University College, died on 4th February, aged 53. He was admitted in 1937.

Mr. J. E. HALLMARK

Mr. John Ernest Hallmark, solicitor, of Llandudno, died on 1st February, aged 80. He was admitted in 1901.

Mr. A. G. JAMES

Mr. Arthur Godfrey James, retired solicitor, of London, W.C.2, has died aged 82. He was admitted in 1903.

Mr. H. S. L. POLAK

Mr. Henry S. L. Polak, retired solicitor, of London, E.C.4, died on 1st February, aged 76. He was admitted in 1914.

Mr. J. WARDLE

Mr. John Wardle, solicitor, of Leek, has died, aged 98. He was admitted in 1917.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

House of Lords

JURISDICTION OF COURT OF APPEAL: WHETHER APPELLATE OR ORIGINAL UNDER FUGITIVE OFFENDERS ACT, 1881

de Demko *v.* Home Secretary

Lord Reid, Lord Goddard, Lord Tucker, Lord Keith of Avonholm and Lord Birkett

22nd January, 1959

Appeal from the Court of Appeal ([1958] 3 W.L.R. 624; 102 Sol. J. 826).

On 19th February, 1958, Baron Kalman de Demko, then resident in the United Kingdom, was arrested on a warrant issued in South Africa, setting out charges of fraud and theft. On 17th June, 1958, he was brought before the magistrate at Bow Street, and a *prima facie* case was made against him. The magistrate committed him to prison to await his return to South Africa. Application was made for leave to issue a writ of *habeas corpus ad subjiciendum* addressed to the Governor of Brixton Prison, and for an order granting relief pursuant to the Fugitive Offenders Act, 1881, s. 10. The jurisdiction under s. 10 was given to "a superior court." On 14th July, 1958, the Divisional Court of the Queen's Bench Division of the High Court made an order refusing both applications. The applicant appealed against the refusal to grant relief under s. 10 of the Act of 1881. A preliminary point of law was taken by the Solicitor-General for the Governor of Brixton Prison that the Court of Appeal had no jurisdiction to entertain the appeal. The Court of Appeal upheld the point and the applicant appealed to the House of Lords.

Lord Reid said that by s. 31 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925: "No appeal shall lie (*a*) except as provided by the Criminal Appeal Act, 1907, or this Act, from any judgment of the High Court in any criminal cause or matter." If there was any jurisdiction in the Court of Appeal with regard to applications under s. 10 of the Act of 1881, it was saved by s. 26 (2) (*d*) of the 1925 Act. A provision similar to s. 31 (1) was found in s. 47 of the Supreme Court of Judicature Act, 1873. It was rightly admitted that the appellant's application was a criminal cause or matter and so the appeal to the Court of Appeal could only be competent if there was some statutory provision exempting such applications. The appellant argued that such a statutory provision was to be found in s. 10 of the Act of 1881. In s. 39 "superior court" was defined as "(1) In England, Her Majesty's Court of Appeal and High Court of Justice." No plausible reason had been suggested why the definition contained any reference to the Court of Appeal. To hold that the Court of Appeal was given original jurisdiction co-ordinate with that of the High Court did not create any great difficulty but to hold that it conferred an appellate jurisdiction created more difficulty. It would entail a breach of the general rule that the court had no appellate jurisdiction in a criminal matter; if that was intended one would expect it to be much more clearly stated. Apart from authority, his lordship would have had no hesitation in holding that original but not appellate jurisdiction was conferred on the Court of Appeal. His lordship considered *R.* v. *Governor of Brixton Prison; ex parte Savarkar* [1910] 2 K.B. 1056 and *Amand* v. *Home Secretary* [1943] A.C. 147, and said that the Court of Appeal came to a correct conclusion and the appeal should be dismissed.

The other noble and learned lords agreed. Appeal dismissed.

Appearances: *Lawton*, Q.C., and *Merriton* (*Beach & Beach*); *Sir Harry Hylton-Foster*, Q.C., S.-G., *Winn* and *E. Cussen* (*Director of Public Prosecutions*); *J. Phipps* (*Jaques & Co.*).

[Reported by F. H. Cowper, Esq., Barrister-at-Law] **[2 W.L.R. 231**

Court of Appeal

NEGLIGENCE: CHILD: ALLUREMENT

Prince and Another *v.* Gregory and Another

Hodson and Ormerod, L.JJ.

12th December, 1958

Appeal from Thesiger, J.

The plaintiff, a boy of ten, claimed damages against the first defendant, another boy, and also against a second defendant, for injuries sustained when the first defendant threw a quantity of lime mortar into his face, causing some loss of sight. The second defendant, the owner and occupier of a dwelling-house, had left the pile of mortar outside his house, in the gutter, intending to use it for repairs to the house. By his statement of claim the plaintiff charged the second defendant with negligence in placing or leaving the mortar in the gutter, and in thus permitting the existence of a danger which he knew or ought to have known would be an allurement to children, without taking reasonable steps to prevent children from coming in contact with it. The Liverpool District Registrar struck out the action against the second defendant on the ground that the statement of claim showed no cause of action, but on appeal to him in chambers, Thesiger, J., reversed the order of the registrar. The second defendant appealed, relying on R.S.C., Ord. 25, r. 4, and the inherent jurisdiction of the court.

Ormerod, L.J., said that in *Jackson* v. *London County Council* (1912), 28 T.L.R. 359, the playground in question was a place where boys were intended to play, and were no doubt sent to play at certain intervals of the day. It was not unreasonable to say in those circumstances that anything left in the playground was something with which they would be likely to play. That was a very different thing from something left in the street for a useful and necessary purpose. Mischievous children might from time to time throw at other children things they picked up in the street, but to anticipate that anything properly left in the street would be so used would be to put a very heavy burden on householders. In these circumstances it was reasonable to take the view that there was not a question here to be left to a jury. If the court was of the opinion that this lime mortar, left as it was, was something from which danger could not reasonably be apprehended, then it was the duty of the court to say that the statement of claim should be struck out. It was a reasonable thing for this defendant to leave this lime mortar as he did. There was no reason why he should anticipate that some mischievous boy would pick it up and throw it at another boy who happened to be passing by, or playing in the street. Therefore, the statement of claim, so far as it affected the second defendant, should be struck out.

Hodson, L.J., agreed. Appeal allowed.

Appearances: *C. M. Clothier* (*Lightbound, Jones & Co.*, for *Hoskinson, Montgomery & Co.*, Liverpool); *W. G. O. Morgan* (*Jaques & Co.*, for *Thomas R. Jones*, Liverpool).

[Reported by J. D. Pennington, Esq., Barrister-at-Law] **[1 W.L.R. 177**

LANDLORD AND TENANT: BUSINESS PREMISES: APPLICATION FOR NEW SUBLEASE: WHETHER TITLE OF MESNE LANDLORDS ACQUIRED WITHIN FIVE YEARS: COUNTY COURT: PREMISES OVER £500 ANNUAL VALUE: JURISDICTION

Cornish *v.* Brook Green Laundry, Ltd., and Others

Jenkins, Romer and Pearce, L.JJ.

23rd January, 1959

Appeal from Westminster County Court.

By s. 30 (1) of the Landlord and Tenant Act, 1954, a landlord may oppose an application by a tenant of business premises for a new tenancy on the ground "(*g*) . . . that on the termination of the

current tenancy the landlord intends to occupy the holding for the purposes" of his business. By subs. (2) this ground cannot be relied on if the interest of the landlord was purchased or created within five years of the termination of the current tenancy. Before 1949 B.G. Ltd. (the "landlords") and Mrs. P., predecessor in title of Mrs. C (the "tenant") had been head leaseholders of business premises, Nos. 23A and 23 respectively, from the Westminster estate trustees. In 1949 the trustees granted to the landlords a lease of both premises for seven years from Michaelmas; the landlords granted to Mrs. P. a sublease of No. 23 for a like period less three days, to which the tenant succeeded. After the coming into force of the Landlord and Tenant Act, 1954, both parties held over under the protection of the Act. In January, 1957, the trustees offered to the landlords a new lease of No. 23 for ten and a half years, subject to their carrying out certain repairs, which offer was accepted in writing. The landlords then offered to the tenant a sublease of No. 23A, which she refused on the ground that the accommodation was too small. On 30th October, 1957, the tenant applied to the county court under the provisions of the Act of 1954 for the determination of the terms of a new sublease of No. 23. The landlords opposed the application on the grounds that pursuant to s. 30 (1) (*g*) they required to occupy the premises themselves, and that pursuant to s. 30 (1) (*d*) they had offered suitable alternative accommodation; they first stated that they held an equitable tenancy of the premises under the agreement of January, but later stated in the alternative that they were tenants under the lease of 1949 as continued by the Act of 1954. Under advice and with the temporary concurrence of the Westminster trustees, they deferred the execution of the prescribed repairs. The annual value of the premises was over £500. The county court judge held that the landlords were holding under an equitable tenancy (on the principle of *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9) arising from the agreement of January, 1957, and so could not rely on s. 30 (1) (*g*) as their interest had arisen within five years. He also held that the alternative accommodation was insufficient, and granted the tenant a sublease of No. 23. The landlords appealed; the tenant cross-appealed, alleging that they were not a "competent landlord" within the meaning of the Act.

ROMER, L.J. delivering the judgment of the court, said that at the time when the landlords opposed the tenant's application they were not entitled as against the Westminster trustees to an equitable tenancy based on the new agreement; they had not carried out the repairs, and the *Walsh* v. *Lonsdale*, *supra*, principle could not be invoked in cases where an agreement for a lease was subject to a condition precedent which remained unperformed by the proposed tenant and had not been waived by the landlord; that was in accordance with *Inland Revenue Commissioners* v. *Derby* [1914] 3 K.B. 1186, which was a correct decision. That being so, the landlords were tenants under a statutory holding over of the lease of 1949, and could rely on ground (*g*). The defendant further contended that the landlords were not entitled to oppose her application as they were not a "landlord" within the meaning of s. 44 (1) or a "competent landlord" under Sched. VI, para. 1. By reason of the Act both the tenancy and the sub-tenancy of 1949 continued; the rights and obligations under those tenancies remained in force, subject to certain statutory variations. It seemed, therefore, that *prima facie* B.G. Ltd. continued to be the tenant's landlord and entitled to oppose her application, and there was nothing in the Act to displace that view, taking into account the terms of ss. 44 (1), 65 and Sched. VI. That being so, s. 31 (1) precluded the grant of a new lease. The judge had had certain doubts whether he should exercise jurisdiction, as the premises were over £500 in value and an equitable question arose, having regard to *Foster* v. *Reeves* [1892] 2 Q.B. 255. But the effect of that case was rightly stated in the note to s. 52 (1) (*d*) of the County Courts Act, 1934, in the County Court Practice. The judge was not asked to enforce an equitable remedy but to decide whether an equitable right existed, which his duty under the Act compelled him to do. He had rightly assumed jurisdiction. Appeal allowed.

APPEARANCES: *John Montgomerie* (*Goodman, Derrick & Co.*); *Gabriel Cohen* (*T. Michael Eastham* with him) (*Beddington, Hughes & Hobart*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 215

Chancery Division

BANKRUPTCY: INSOLVENT ESTATE: ADMINISTRATION IN BANKRUPTCY: GIFTS PRIOR TO DEATH

In re Eichholz, deceased

Harman, J. 16th December, 1958

Action.

The deceased married the defendant, his second wife, on 18th January, 1955. By a contract dated 14th February, 1955, he agreed to buy a freehold dwelling-house for £15,500, and paid a deposit of £1,550. By letter dated 14th February, 1955, the deceased wrote to his bank "Under a contract of marriage . . . I am providing a house for her [the defendant] . . ." and having named the house and the vendor, requested the bank to loan him the purchase money, and made suggestions for the repayment of the loan. Completion took place on 15th March, 1955, by a conveyance by which, after reciting, wrongly, that there had been an agreement with the defendant for the purchase, the property was conveyed to her in fee simple. The deceased was not a party to the conveyance. The deceased died on 17th November, 1957. His estate was hopelessly insolvent and it was discovered that he had been insolvent at the date of the purchase of the house. By his will he appointed the defendant and his brother executors, and they swore an Inland Revenue affidavit in January, 1958, in which the defendant claimed the dwelling-house as her property. As a result of many further claims made by creditors against the estate, the executors applied to have the estate administered in bankruptcy in April, 1958. The trustee, whose claim for the return of the property was refused by the defendant, issued a writ claiming a declaration that there had been no gift of the property to the defendant which, therefore, she held as trustee and not beneficially; alternatively, that under s. 172 of the Law of Property Act, 1925, the conveyance was voidable.

HARMAN, J., said that in his judgment there was a gift of the house by the deceased to the defendant, but that the gift was not made for good consideration, the letter of 14th February, 1955, being too ambiguous to support a contract made in consideration of marriage. The next question was whether the trustee could set the transaction aside. It was admitted that he could not rely on s. 42 of the Bankruptcy Act, 1914, because of the decision of the Court of Appeal in *In re Gould* (1887), 19 Q.B.D. 92. For the defendant, it was argued, *inter alia*, that by an extension of the doctrine of *In re Gould*, *supra*, no such action as the present lay after an order had been made under s. 130 of the Bankruptcy Act, 1914 (which for this purpose might be taken to be equivalent to the similar sections of the Bankruptcy Acts of 1869 and 1883). But he (his lordship) could see no good reason why the *In re Gould* doctrine should be applied to s. 172 of the Law of Property Act, 1925. The headnote in that case was correct in stating that the decision was merely that the rights of a trustee in bankruptcy under s. 42 of the Act of 1914 were not conferred on a trustee appointed under s. 130. In other words, that part of the bankruptcy law was not imported by s. 130 so as to be available where a man died without being declared a bankrupt. In the view he (his lordship) took, the trustee could set aside the gift of the house to the defendant under s. 172 of the Act of 1925, it being unnecessary to prove a fraudulent intent and sufficient merely to show that the circumstances were such that the gift would have the effect of defeating creditors.

APPEARANCES: *Charles Russell*, Q.C., and *Muir Hunter* (*Sidney Pearlman*); *Harold Christie*, Q.C., *Andrew Martin* and *E. W. H. Christie* (*Robin Howard & Co.*)

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 200

Queen's Bench Division

TOWN AND COUNTRY PLANNING: ENFORCEMENT NOTICE QUASHED: RIGHT OF APPEAL

Ealing Corporation *v.* Jones

Lord Parker, C.J., Donovan and Ashworth, JJ.

20th January, 1959

Case stated by appeals committee of quarter sessions.

A local planning authority served an enforcement notice on the appellant under s. 23 (1) of the Town and Country Planning

Act, 1947, requiring him to discontinue using certain land as a car park. A court of summary jurisdiction quashed the notice on the ground that its use for that purpose had been in existence before the passing of the Act. The local planning authority appealed to quarter sessions under s. 23 (5) against the decision of the court of summary jurisdiction, and the appeals committee took the view that the authority was "a person aggrieved" within the meaning of that subsection and so entitled to appeal. They accordingly heard and allowed the appeal. The appellant now appealed to the Divisional Court.

LORD PARKER, C.J., said that it was unnecessary to come to any final conclusion on the question whether the words "any person" in s. 23 (5) covered a local planning authority. For the purposes of this appeal he would assume that they did. As to whether the authority could be said to be "aggrieved," this was the first case in which a local planning authority had claimed to have the right to appeal to quarter sessions under s. 23 (5). That did not mean that they might not have the right, but on the principles laid down in the authorities relating to other statutes which had been cited to the court he was satisfied that a mere annoyance that what was thought to be a breach of planning control turned out not to be such a breach and, equally, the mere fact that the authority had been frustrated in the performance of what it thought to be its public duty under the Act, were not of themselves considerations sufficient to make it an "aggrieved person." If costs were awarded against a public authority or the result of the decision were to impose upon the authority some legal burden that would make it a "person aggrieved." (His lordship referred to *R.* v. *London Quarter Sessions; ex parte Westminster Corporation* [1951] 2 K.B. 508, and *R.* v. *Nottingham Quarter Sessions; ex parte Harlow* [1952] 2 Q.B. 601). In the present case no financial or legal burden had been imposed on the local planning authority so that it was not a "person aggrieved." Finally, looking at the statute alone, if Parliament had intended the local planning authority to be able to appeal they would have said so clearly. The appeals committee was wrong in law and the appeal should be allowed.

DONOVAN, J., said that if one came to the expression without reference to judicial decision one would say that the words "person aggrieved by the decision" meant no more than a person who had the decision given against him; but the courts had decided that the word "aggrieved" was not synonymous in this context with "dissatisfied." It connoted some legal grievance, for example, a deprivation of something, or an adverse effect on the title to something, and he could not see that here. Moreover, there was an alternative power of control in ss. 26 and 27 which supported the view that Parliament did not think it necessary to confer on planning authorities a right of appeal under s. 23 (5). If Parliament had wanted to do so one might reasonably think words would have been used which placed the matter beyond all doubt and not words which the authorities had held were ambiguous.

ASHWORTH, J., agreed. Appeal allowed.

APPEARANCES: *Brendan Shaw* (*A. V. Hawkins & Co.*); *W. G. Wingate* (*E. J. Cope Brown*, Town Clerk, Ealing Corporation).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law **[2 W.L.R. 194**

WEIGHTS AND MEASURES: DEFICIENCY IN SACKS OF COAL: LARCENY BY SELLERS' SERVANT

Winter *v.* Hinckley and District Industrial Co-operative Society, Ltd.

Lord Parker, C.J., Donovan and Ashworth, JJ.

28th January, 1959

Case stated by Market Bosworth Justices sitting at Hinckley.

Sacks of coal exposed for sale in the street were of less weight than was represented on the labels on the sacks, some coal from each sack having been stolen by the servant of the sellers who was driving the coal lorry. The sellers were prosecuted under s. 29 (2) of the Weights and Measures Act, 1889, and they in turn served a notice under s. 12 (5) of the Sale of Food (Weights and Measures) Act, 1926, and preferred informations against their driver. The justices dismissed the informations both against the sellers and against the lorry driver. The prosecutor appealed.

DONOVAN, J., reading the judgment of the court, said that counsel for the sellers admitted that the offence created by s. 29 (2) was absolute and that *mens rea* was not a necessary ingredient of the offence. He also admitted that the representation constituted by the sellers' label on each of their sacks, *viz.*, "112 lb. of coal," was a representation by the sellers. But he said that, in the circumstances, the sellers did not "expose the coal for sale." This he alleged was an independent act done by the driver outside the scope of his employment and therefore that the sellers were not in breach of s. 29 (2). The court had some difficulty in understanding that argument. Before the driver committed the theft of a few pounds of coal from some of the sacks, the 112 lb. of coal in each of those sacks was admittedly being exposed for sale by the sellers; and what was true of the whole contents of the sacks was true of each part. When, therefore, the contents of the sacks were reduced to 90-odd lb., each of those sacks was still being exposed for sale by the sellers. The reduced contents were unaffected in this respect by the driver's pilfering. Different considerations would arise if the driver had substituted different coal not belonging to the sellers, but such was not the case. It was the sellers' coal which was still being sold in their sacks by the man authorised to sell it; and in those circumstances the sellers were clearly exposing it for sale. Appeal allowed.

APPEARANCES: *J. G. Jones* (*Kingsford, Dorman & Co.*, for *John A. Chatterton*, Leicester); *H. A. Skinner* (*Thomas Flavell & Sons*, Hinckley).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 182**

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: JUSTICES: REHEARING ORDERED ON APPEAL: WHETHER COURT REHEARING CASE SHOULD READ JUDGMENTS OF DIVISIONAL COURT

Claxton *v.* Claxton

Lord Merriman, P., and Stevenson, J. 19th January, 1959

Application for the directions of the Divisional Court in connection with the rehearing by the Kingston upon Hull justices of a wife's application for maintenance.

On 18th April, 1957, the stipendiary magistrate for Kingston upon Hull dismissed a wife's complaint that her husband had deserted her and that he had wilfully neglected to provide reasonable maintenance for her. The husband did not give evidence. The wife appealed; and on 17th October, 1958, the Divisional Court allowed her appeal and ordered a rehearing of her complaint by a panel of justices. On 29th December, 1958, at the rehearing before the Kingston upon Hull justices, counsel opening the wife's case proposed to read a transcript of the judgments of the Divisional Court which had been delivered at the hearing of the wife's appeal. The justices refused to allow this transcript to be read, and the case was adjourned so that the directions of the Divisional Court on this point could be obtained.

LORD MERRIMAN, P., said that when justices were ordered to rehear a case because of a mistake of law, the transcript of the judgments of the Divisional Court should be considered by them so that they might avoid a repetition of that mistake; but when the rehearing was ordered because the Divisional Court had differed from the justices as to the inferences of fact to be drawn from the evidence, the justices who reheard the case ought to reach their own conclusions of fact upon the evidence then placed before them, without reference to what the Divisional Court had said as to the inferences to be drawn from the evidence given at the previous hearing. If, however, in the course of the rehearing any reference should be made to any supposed point on which the Divisional Court was alleged to have expressed an opinion, or if any attempt should be made to introduce any part of the reasoning of the justices upon a question of fact, then the whole matter would be open and the justices would not only be entitled but would be bound to let in the judgments of the Divisional Court.

STEVENSON, J., concurred. Direction accordingly.

APPEARANCES: *Mrs. E. K. Lane* (*Kingsford, Dorman & Co.*, for *Gosschalk, Austin & Wheldon*, Hull); *J. S. Taylor* (*Thompson, Cook & Babington*, Hull).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[2 W.L.R. 236**

DIVORCE: PRACTICE: AMENDING ANSWER TO ALLEGE DESERTION BY WAY OF CROSS-PETITION: PROCEEDINGS BEGUN BEFORE 1st JANUARY, 1959: CROSS-PETITION FILED THEREAFTER: MATRIMONIAL PROCEEDINGS (CHILDREN) ACT, 1958, NOT APPLICABLE

Swiszczowski *v.* Swiszczowski and Jewasinski

Karminski, J. 29th January, 1959

Defended petition for divorce.

The husband by his petition alleged adultery, cruelty and desertion. The wife by her answer denied the allegations and prayed for a divorce in the exercise of the court's discretion on the ground of cruelty (prior to the date of the alleged adultery). At the date her answer was filed the parties had lived apart for a period of less than three years; but the wife, relying on the proviso to s. 4 of the Matrimonial Causes Act, 1950, further alleged that the husband had deserted her prior to the alleged adultery. The three years were completed prior to the hearing. Upon the husband, by his counsel, stating at the conclusion of the husband's evidence that he proposed to offer no further evidence upon the charges made in his petition, his lordship indicated that the wife might be given leave to pray for a divorce on the ground of desertion by way of cross-petition. Reference was made to *Robertson* v. *Robertson* [1954] 1 W.L.R. 1537, in which Barnard, J., applying his decision in the nullity case of *Pickett* v. *Pickett* (*otherwise Moss*) [1951] P. 267, had given leave in similar circumstances—save that in that case the answer contained no cross-prayer for relief but consisted only of a bare denial—to amend the answer by adding the charge of desertion "by way of cross-petition." Application was accordingly made for leave to amend the answer by adding the words "And by way of cross-petition [the wife] saith" followed by the allegation of desertion.

KARMINSKI, J., gave leave to amend the answer accordingly, and in the exercise of his discretion granted the wife a decree on the ground of desertion, and granted her the custody of the child of the parties. His lordship said that, although the cross-petition had been filed after 1st January, 1959, the date when the Matrimonial Proceedings (Children) Act, 1959, came into force, that Act would not be applicable in relation to the child, since the cross-petition was part of the original proceedings.

APPEARANCES: *O'Malley* (*Alban P. B. Gould*); *John B. Gardner* (*Lionel Leighton & Co.*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] **[1 W.L.R. 187**

Court of Criminal Appeal

CRIMINAL LAW: CAPITAL MURDER: "IN THE COURSE . . . OF THEFT"

R. *v.* Jones

Lord Parker, C.J., Donovan and Ashworth, JJ.

26th January, 1959

Appeal against conviction.

The appellant broke into a store and went upstairs where he knew there was a safe. To his surprise he found it open, and took about £70. He was about to go downstairs when he heard the click of the front door; the downstairs light went on and the store manager came upstairs. When he was near the top of the stairs the appellant struck him a fatal blow. The appellant was convicted of capital murder under s. 5 (1) (*a*) of the Homicide Act, 1957. He appealed on the ground that as he had decided to leave the premises before he heard the front door open, the theft was complete and he was no longer acting "in the course . . . of theft" when he struck the manager, and therefore he could not be guilty of capital murder.

LORD PARKER, C.J., said that the real point concerned the question whether the murder was committed in the course or furtherance of theft so as to constitute capital murder. It was said that if the appellant were to be believed the theft was complete. His case was that having found the safe open he took fright and quite apart from the clicking of the front door he had determined to go. It was said that that defence was never adequately put to the jury. In the view of the court that defence was adequately put. Even if it were a case in which the defence had not been properly put, it did not seem that the argument was sound that if a man might be charged with thieving the offence was complete for all purposes, so that if thereafter in an attempt to avoid detection he struck someone and committed murder, that was not capital murder. This was a case where the prisoner was caught red-handed, and in order to avoid detection and while still on the scene of his theft, he committed murder; that was "in the course . . . of theft," and the appeal would be dismissed.

APPEARANCES: *Bernard Gillis*, Q.C., and *Lionel H. Scott* (*The Registrar, Court of Criminal Appeal*); *Geoffrey Veale*, Q.C., and *R. Withers Payne* (*Director of Public Prosecutions*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[2 W.L.R. 190**

Restrictive Practices Court

RESTRICTIVE PRACTICE: MINIMUM PRICE SCHEME: EXCESS CAPACITY: GENERAL LEVEL OF UNEMPLOYMENT

***In re* Yarn Spinners' Agreement**

Devlin, J. (President), Upjohn, J., Pearson, J., Sir Stanford Cooper, Mr. W. L. Heywood, Mr. W. Wallace and Mr. W. G. Campbell. 26th January, 1959

Reference.

An agreement made between the members of the Yarn Spinners' Association provided, *inter alia*, for a minimum price scheme and bound the members of the association not to sell yarn containing 85 per cent. or more of cotton at a price lower than that fixed under the rules of the association. The association contended that its restrictions were not contrary to the public interest on the ground that their removal would deny to the public as purchasers, consumers or users of any goods specific and substantial benefits within the meaning of para. (*b*), and would be likely to have a serious and persistent adverse effect on the general level of unemployment in certain areas, within para. (*e*) of s. 21 (1) of the Restrictive Trade Practices Act, 1956, and that the restrictions were reasonable having regard to the balance between those circumstances and the detriment to the public (if any) resulting from their operation.

The following were among the findings made by the court. The spinning industry, which formed a section of the Lancashire cotton industry, was concentrated in a small area about 35 by 25 miles, mainly in Lancashire and was in the hands of about 225 concerns employing over 100,000 operatives. For the most part spinners were a separate body whose main customers were doublers and weavers. About a quarter of the yarn passed into the hands of doublers and of all the yarn spun whether single or double, 70 per cent. passed to weavers who manufactured from it cloth in an unfinished state which was passed on to merchant convertors for finishing. Most of the yarn consumed by the public reached it in the form of cotton goods and any increase or decrease in the price per pound of yarn had a diminished impact on shop prices. The minimum price was an artificial figure calculated on a hypothetical average cost. In theory the minimum price scheme was designed to tide spinners over short periods of recession and to guard against cut throat competition; it was based on the theory that the spinning industry was subject to short but violent recessions and presupposed that periods of recession when the minimum prices were effective would be exceptional. In fact, for most of the time since 1952 most of the spinners had been operating at the minimum prices and the scheme appeared to ensure a reasonable return all the time to the majority of them. Since 1951, on the average, the prices for yarn had been higher than they would have been in a free market. Spinning was a contracting industry and the scheme had seriously retarded the natural process of high cost producers closing down to match the falling demand, and at the time of the hearing there was a substantial amount of excess capacity over and above the reserve capacity which it was prudent to retain to meet any sudden increase in demand. The excess capacity would not be eliminated in the foreseeable future unless the scheme was abrogated. Notwithstanding the scheme mills had been closing down; that process would have been continued in any event, but removal of the scheme would accelerate it considerably and put out of business a number of mills which might have stayed on for very much longer,

but the industry would not be left without sufficient capacity to meet ordinary demands of the home market and maintain if not increase its share of the export market. Quite a considerable export business had been lost, not so much in yarn as in cloth, through the rigidity of the scheme; exports of yarn and cloth did not form a large part of the country's export trade, but they were not insignificant. The scheme contributed to price stability and, on balance, it was advantageous to trade purchasers such as weavers.

DEVLIN, J. (President), reading the judgment of the court, said that the court were not satisfied as to the benefits resulting from the scheme alleged to be conferred on the public at large. Price stability without the sacrifice of a free market would be a benefit, but the court could not look at it in isolation and admit it as a benefit and defer for subsequent consideration the question whether the loss of a free market was a detriment. What had to be considered was whether price stabilization as an alternative to a free market was a benefit to the purchasing public in the circumstances of this case. There might be particular cases where it did confer a peculiar benefit sufficiently great to outweigh the loss of a free market, but in this case no benefit was conferred that was not outweighed by the loss of the chance of reductions in price that might be secured under free competition. In considering the effect which removal of the restriction would have on the general level of employment in the areas in question, the court was required to act without certainty and on the balance of probabilities and to arrive at a general conclusion in the terms used in the Act. Although unable to make any specific findings upon the incalculable factors they had to apply, the court found that the closing of mills consequent upon the abrogation of the scheme would have a serious adverse effect on the general level of unemployment and that that effect would be persistent. The court found that there was detriment to the public resulting from the operation of the restriction in the fact that the price of yarn was higher than it might be, in the loss of exports, and also in the excess capacity in the industry (for it was in the public interest that labour and capital should be employed as productively as possible). In balancing the circumstances within paras. (*b*) and (*e*) against those detriments the court gave little weight to the benefits to weavers (assuming that they were "specific" benefits to the "public" within para. (*b*)); having regard to the detriments, restrictions securing benefits to only a small class of trade purchasers were clearly unreasonable. The effect on the general level of unemployment was more grave. But it was localised, whereas the price of its avoidance would have to be paid nationally and the court had in mind in particular the waste of national resources in the form of excess capacity. It was not until that was got rid of that the industry could be made into a more compact entity, a reorganisation that they believed would ultimately be beneficial not only to the nation and the purchasing public but to the industry itself and those employed in it. They had decided on balance that it would be unreasonable to continue the restrictions in order to avoid the degree of unemployment they feared and found that the association had not made out a case under s. 21 as a whole. Declaration accordingly.

APPEARANCES: *Sir Andrew Clark*, Q.C., *R. O. Wilberforce*, Q.C., and *Geoffrey Tompkin* (*John Taylor & Co.*, Manchester); *A. A. Mocatta*, Q.C., and *J. R. Cumming-Bruce* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 154**

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Losing Ground

Sir,—I have read with great interest your article under "Current Topics" in your issue published on the 23rd January.

I agree that accountants and bank managers both attempt to oust solicitors from their traditional role of men of affairs and advisers to their clients, and that now that the family doctor under the National Health Service has become practically a qualified signature on forms and has lost the confidence of his patients, it is essential that our profession should retain their position as advisers.

It is a great pity that banks should have come into competition with solicitors in doing income tax work as they can and do advertise which we cannot do.

When I returned after the war I did find that accountants, who were in a reserved occupation, had a grasp of the war-time measures with regard to income tax and profits tax, etc., and they had also taken over the formation of companies including the preparation of the memorandum and articles of association. After on three successive occasions having had to clear up the mess made by accountants, incidentally two of them unqualified, I prevailed upon the Council of The Law Society to persuade their opposite numbers in the accountancy profession that the preparation of memorandum and articles of association was not for accountants and an article to this effect was published in the *Accountant*, with the authority of the councils of the Chartered Accountants' Association and the Institute of Incorporated Accountants. Unfortunately accountants apparently have only short memories, and I now find that they are again drawing memoranda and articles of association which is contrary to their practice.

If a solicitor ignores the decisions of the Council of The Law Society he is liable to dire penalties but apparently there is no control over the accountancy profession.

Personally I always report to The Law Society every time I find an accountant preparing a memorandum or articles of association so that the Council may have ammunition when they next tackle the accountants (if they will).

Incidentally accountants have legal protection as auditors: why should we not have protection against others doing our work, namely the drafting of memoranda and articles of association, bearing in mind that often these regulate the affairs of the shareholders well after they are dead?

BRYAN CROSS.

London, E.C.2.

The Solicitor's Income

Sir,—The present correspondence about the incomes of solicitors does not prove much, save that assistant solicitors are a miserably paid body of men.

They say they cannot better their lot because they cannot afford to pay for a share in a practice.

They should realise that paying for shares of goodwill is simply throwing good money after bad. In most cases the need for cash in established firms arises from bad management, and the process of dishing out more money for these concerns is merely to enable the bad managers to keep up their mismanagement a little longer.

The solution to the young solicitor's predicament is simple. He should, either by himself or with others of a speculative turn of mind, set up in practice in any shop, cellar or garret that he can find. He can sleep if necessary in a railway waiting room (or in his own waiting room if he has one), and return each morning to his chosen profession with the enthusiasm of one to whom each meal is itself a miracle.

JOHN C. MORRIS.

Highgate Village,
London, N.6.

Young Delinquents and the Law

Sir,—Mr. C. A. Joyce has written an article on this subject which cannot fail to be of great interest, but which cannot help but arouse feelings of surprise and annoyance in a great many people.

One point he makes is with regard to religion. He gives the decline in religious observance as a factor in delinquency and therefore wants "a serious inquiry into the teaching of

religion in schools." And he feels that a candidate for a teaching post should be asked what his religious views are. It is clear from Mr. Joyce's article that he is speaking here not merely of a decent and moral attitude to life but of "attending church or chapel," of a full belief in the Christian religion and in the tenets of that faith.

I would take issue with this on two grounds. First, does the teaching of religion in schools really increase religious observance? I ask this question as one who between the ages of 3½ and 16 went continuously to schools which both taught religion and practised religious observance, the only result being to produce in me a somewhat militant agnosticism. Secondly, the teaching of a *moral* outlook in schools is much to be encouraged, but on what grounds does Mr. Joyce assume that those who practise the Christian religion are morally superior to those who do not? What nonsense such an assumption is. Lord Birkett, in an interview he gave recently on television, said that he believed in Christian standards of conduct but that, for the rest, he was an agnostic. Perhaps if Mr. Joyce had had anything to do with it Lord Birkett would never, for this reason, have been elevated to the Bench, let alone to the House of Lords: how fortunate that he had nothing to do with it.

The next point which may be taken up is this sentence: "It is true neither of life here nor hereafter that people are not responsible for their actions (save in such cases as fall clearly into the purview of mental incapacity)." I would not myself claim to speak on the life hereafter, if there be one, but so far as this life is concerned I would flatly disagree. There is no space to go fully into this here, but I cannot see men as other than the product of the outside factors which have made them. Every man is made entirely by outside factors, for if there were no outside factors there would be no man. How a man can be held morally responsible for what the forces of nature and environment have made him I shall never understand. Of course crime must be stopped, and if punishment is the only way to do it then we must punish criminals. But let us at least recognise the fact that they are punished because it is expedient and not because they "deserve" it.

Mr. Joyce says: "In common with many people, I do not like violence in any form, but if young thugs propose to use violence as a matter of policy they should not be allowed to have a monopoly of it." But is a society which uses violence to achieve its ends in any superior moral position to a "young thug" who uses it to gain his? And does it really achieve the desired end in any case? Even if the conduct of the offender is temporarily improved, his stored-up resentment and hatred of society must surely be increased.

I do not pretend to know the answers, but of one thing I do feel sure. Mr. Joyce says: "Where violence in any form is threatened or used I think the courts *must* bear in mind that their major function is the preservation of the Queen's peace and not the psychiatric study of those who break it." In my view, it is only when we realise that these two functions are not incompatible and that on the contrary the former can only be achieved through the latter, that we shall be in a position to understand, and therefore, to stop, violence.

R. T. Oerton.

Barnstaple,
Devon.

"THE SOLICITORS' JOURNAL," 12th FEBRUARY, 1859

On the 12th February, 1859, The Solicitors' Journal wrote: "Wisdom, we are told, is justified in her sons; and Lord Chelmsford thinks that sons-in-law may be brought within the equity of the dictum. We doubt the soundness of this ruling, and believe that wisdom will be sorely troubled to justify her offspring, Mr. W. Higgins. Mr. Higgins, indeed, is a gentleman of much modesty; for, having been called to the Bar at Gray's Inn in 1847, he has since that period been content to blush unseen, not even appending to his name in the Law List any clue which might guide an inquiring public to his abode, or the slightest indication of the line of legal business to which his talents are devoted. But in 1858, Lord Chelmsford, by a sudden turn of the wheel of fortune, ascended the Woolsack, and from that hour his children saw a great light. Mr. W. Higgins brought his legal lore—and what less could he in duty do?—to the assistance of his illustrious father-in-law; and was speedily rewarded—and what less could he in family tenderness expect?—with a Bankruptcy Registrarship entailing the responsible duty of pocketing a thousand a year. So far so good. We should not be hard on a man who feels that his time of patronage is short, who has a hungry relative at his elbow, and such an easy post as a registrarship at his disposal. Flesh and blood, even on the Woolsack, may be forgiven thus far. But when this pardonable partiality, not content with a comfortable provision for some family offshoot, swells into flagrant nepotism . . . it must no longer count on impunity. Mr. W. Higgins as a Registrar in Bankruptcy was a mild mistake. Mr. W. Higgins as a Master in Lunacy is a judicial scandal. One of the most important offices connected with the Court of Chancery . . . has been put into the hands of an individual who knows no more of law than his patron does of decency. An appointment of £2,000 a year salaried at that high amount . . . to obtain men of high standing and ability has been jobbed away to a Chancellor's son-in-law who will be laughed at by every competent lawyer . . ."

BOOKS RECEIVED

Bullen and Leake's Precedents of Pleadings in the Queen's Bench Division. Eleventh Edition. Edited by L. L. Loewe, M.A., of the Middle Temple, Barrister-at-Law. Consulting Editors: R. F. Burnand, C.B.E., O.B.E. Mil., M.A., Senior Master of the Supreme Court and Queen's Remembrancer, and I. H. Jacob, LL.B., a Master of the Supreme Court. pp. cxcix and (with Index) 1186. 1959. London: Sweet and Maxwell, Ltd. £7 7s. net.

The Legal Historian. Number I. pp. 65. Published annually for the American Society for Legal History by The Bobbs-Merrill Co., Inc., Indiana.

Hotels and Restaurants throughout the British Isles and Northern Ireland. Thirty-first Edition. pp. xvi and 519. 1959. London: British Hotels and Restaurants Association. 3s. 6d. net.

The Sale of Flats. Second Edition. By Edward F. George, LL.B., Solicitor of the Supreme Court. pp. xxiv and (with Index) 222. 1959. London: Sweet & Maxwell, Ltd. £1 7s. 6d. net.

The Irish Election System. By J. F. S. Ross. pp. x and (with Index) 85. 1959. London: Pall Mall Press, Ltd. 3s. 6d. net.

Stamp Duties. Supplement to Second Edition. By F. Nyland, LL.B., Solicitor of the Supreme Court. pp. viii and 20. 1958. London: Butterworth & Co. (Publishers), Ltd. 6s. net.

Clarke Hall and Morrison's Law relating to Children and Young Persons. First Supplement to Fifth Edition. By A. C. L. Morrison, C.B.E., formerly Senior Chief Clerk of the Metropolitan Magistrates' Courts, and L. G. Banwell, Chief Clerk of the Metropolitan Juvenile Courts. pp. xi and 64. 1958. London: Butterworth & Co. (Publishers), Ltd. 10s. net.

The Rule of Law in the United States. pp. 108. 1958. The Hague: The International Commission of Jurists.

The Rule of Law in Italy. pp. 46. 1958. The Hague: The International Commission of Jurists.

The Rule of Law in the Federal Republic of Germany. pp. 41. 1958. The Hague: The International Commission of Jurists.

REVIEWS

A Guide to Defamation Practice. Second Edition. By COLIN DUNCAN, of the Inner Temple, Barrister-at-Law, and R. T. HOOLAHAN, of the Inner Temple, Barrister-at-Law. With a Foreword by the late Sir VALENTINE HOLMES, Q.C. 1958. London: Sweet & Maxwell, Ltd. 15s. net.

This is the second edition of an invaluable little book first published in 1953. It treats primarily with the technicalities of pleading in actions for defamation, and as such must be of limited appeal. (An example of such technicalities is to be found in *Cadam* v. *Beaverbrook Newspapers, The Times*, 30th January, 1959.) Those who do consult it will find it (in the words of the late Sir Valentine Holmes, Q.C., who contributed a foreword) "not only necessary but indispensable." This is not to be wondered at, for Mr. Duncan is the successor in title to Fraser, J., through Slade, J., and those who know the forensic history of defamation over the last fifty years will recognise at once the importance of those names.

The new edition examines the effect of the Defamation Act, 1952, and the decisions reached since that date in a number of cases, many of them not reported because the decisions have been interlocutory. The seven chapters of the book cover the whole subject widely and analyse not only the steps to be taken before action, but also the statement of claim, defence, interlocutory proceedings and special practice notes. There is a very good appendix, giving the whole of the Act of 1952.

Principles of Local Government Law. By C. A. CROSS, M.A., LL.B., Barrister-at-Law. 1959. London: Sweet & Maxwell, Ltd. £1 15s. net.

This new students' book is packed full with detailed information, logically arranged, and it should admirably meet its main purpose, that of providing a work for students and giving examples from leading cases. At times the principles referred to in the title are in danger of becoming submerged under the detail, but this is perhaps not the author's fault, as there are often no principles at all to be found in such a mass of virtually unrelated statute law. Some comment on such general topics as the service of notices and the conduct of prosecutions and proceedings generally might, however, have been included.

The broad field of the activities of local authorities has been well covered—there are, of course, chapters on judicial control, compulsory acquisition (*not* "purchase," *please*; "compulsory purchase" really is a contradiction of terms), grants, byelaws, the acquisition of powers, etc., as well as a reasonably detailed account of the several local government services. The Local Government Act, 1958, has been written into the text in all the appropriate places, and the claim of the dust cover that the book is "completely up-to-date" seems to be justified.

Some of the statements of the case law are uncritical in their approach, which is perhaps to be regretted in a students' book; for example, the "cab-driver's case" (see p. 179) has by no means escaped criticism (see (1954), 70 L.Q.R. 203), and further comment could have been included on *Betts* v. *Penge U.D.C.* (see p. 258), on the question whether the expression "nuisance" as used in s. 92 of the Public Health Act, 1936, is to be understood in the ordinary meaning of the common law. On a quick reading of the book we found a few omissions (for the purposes of the existing valuation lists shops, etc., are partially de-rated, under the Rating and Valuation Act, 1957 (p. 112), some mention of costs could have been included on pp. 76–78, and the national parks and areas of outstanding natural beauty under the National Parks and Access to the Countryside Act, 1949, should have been referred to in the "planning" chapter (ch. 19)), and we doubt whether it is accurate to say that the clerk of the peace for a borough quarter sessions is "customarily" the town clerk (see p. 402); in quite a number of towns this office is still held by a solicitor in private practice. The indices are good, except that the table of cases is confined to a mere list of names. We see from the preface that the table of cases has been prepared by the publishers, and we feel that they are not doing their authors justice (for the same fault can be found in other books published by this otherwise excellent firm), in not including a case table giving full references (especially where, as in this case, reference is made in the text to one set of reports only); this is particularly important in a students' work where the reader should be encouraged to check the authorities for himself.

In other respects the book is well produced, and the price is reasonable. A further feature of interest is the appendices giving tables of various detailed matters, such as the powers and duties of parish councils. To the average solicitor in private practice, however, we doubt whether the book would be of great assistance; to the student taking the subject for the solicitor's final, the book will be most useful.

The International Law of Art. By BARNETT HOLLANDER, of the New York Bar. 1959. London: Bowes & Bowes, Ltd. £3 3s. net.

This is an unusual work virtually being a miscellany of various topics with art as the connecting theme. No doubt it may prove to be of interest to artists with a business flair although we are not competent to assess what will attract attention in the world of art. Although the table of contents of this book is interesting the style and arrangement of the material will preclude its becoming a serious candidate for the position of a standard work on the law of art. On p. 157 it is incorrectly stated in a footnote that English law provides a limit of five years within which an action for breach of contract may be brought; possibly this inaccuracy flows from a misconceived deduction drawn from *Leaf* v. *International Galleries* (*a firm*) [1950] 2 K.B. 86, a case which is not mentioned by name. The book, 387 pages long, is well printed on good paper and handsomely bound.

PRACTICE DIRECTION

PROBATE, DIVORCE AND ADMIRALTY DIVISION

WORDING OF DECREE ON GROUNDS OF ADULTERY

In accordance with a recent ruling of the Court of Appeal the President has directed that in future the wording of a decree on the ground of adultery should in every case record the judge's finding in full by stating with whom adultery was found to have been committed.

1. The normal form, for use where adultery is found against a named person who has been served, will recite that the decree is by reason that the wife or husband, as the case may be, has committed adultery:—

"... with the [Co-Respondent] [Party Cited] [Intervener] [Second Respondent] *A. B.*"

or

"... with *A. B.* upon whom the [Petition] [Answer] has been served."

The latter wording will be used for a woman named or party cited in an Answer not claiming relief who has not intervened or been made a second Respondent.

2. The wording to be used in other cases will be as follows:—

(*a*) *Where the name of the adulterer is not known*

"... with a man [woman] unknown."

(*b*) *Where service has not been effected in the normal manner*

(i) when service has been wholly dispensed with

"... with a man [woman] service upon whom has been dispensed with."

(ii) when any form of substituted service has been allowed

"... with a man [woman] upon whom substituted service has been allowed."

(*c*) *Where adultery was found against the spouse but not against the alleged adulterer*

"... with a man [woman] as against whom the charge was not proved."

Dated 3rd February, 1959.

By direction of the President.

B. LONG,
Senior Registrar.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

Progress of Bills

Read First Time:—

European Monetary Agreement Bill [H.C.] [5th February.
Intestate Husband's Estate (Scotland) Bill [H.C.] [3rd February.
Weeds Bill [H.L.] [3rd February.
To consolidate certain enactments relating to injurious weeds.

Read Second Time:—

Agriculture (Small Farmers) Bill [H.C.] [5th February.
Bootle Corporation Bill [H.L.] [3rd February.
Glamorgan County Council Bill [H.L.] [3rd February.
Gloucester County Council Bill [H.L.] [3rd February.
Halifax Corporation Bill [H.L.] [4th February.
Lancaster Corporation Bill [H.L.] [4th February.
Lee Valley Water Bill [H.L.] [4th February.
Middlesex County Council Bill [H.L.] [5th February.
Milford Haven (Tidal Barrage) Bill [H.L.] [5th February.
Transport (Borrowing Powers) Bill [H.C.] [3rd February.

Read Third Time:—

Navy, Army and Air Force Reserves Bill [H.C.] [3rd February.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time:—

International Bank and Monetary Fund Bill [H.C.] [4th February.
To enable effect to be given to proposed increases in the quotas of the International Monetary Fund and in the capital stock of the International Bank for Reconstruction and Development.

Read Second Time:—

Deer (Scotland) Bill [H.L.] [3rd February.
Housing (Underground Rooms) Bill [H.C.] [30th January.
Legitimacy Bill [H.C.] [30th January.
Malta (Letters Patent) Bill [H.C.] [2nd February.

In Committee :—

House Purchase and Housing Bill [H.C.] [5th February.

B. Questions

Rating of Plant and Machinery

Mr. H. Brooke said that the report of the Committee on the Rating of Plant and Machinery followed, in its main essentials, the same principles as the current Order. But the Committee recommended some limitation in class 1 (*a*) of the rateability of machinery and plant for primary transformation or main transmission of electric power; and in class 4 its statement included a number of additional items of plant and machinery of both old and new types whch the Committee proposed should be rated if they were in the nature of a building or structure, and omitted a few other items which appeared in the existing list. The Committee presented majority and minority views on proposals to exempt from rating power-operated plant which moved or rotated, and items of plant and machinery which it was the trade practice to transfer as required and which were limited in weight, size and volume.

Any representations on the Committee's recommendations should reach him not later than the end of February. He intended, when he had considered them, to make an Order that would take effect from 1st April next. [30th January.

Criminal Law Revision Committee

Mr. R. A. Butler gave the terms of reference of the Standing Committee on the Revision of the Criminal Law appointed under the chairmanship of Lord Justice Sellers (see p. 97, *ante*) as follows: "To be a Standing Committee, to be known as the Criminal Law Revision Committee, to examine such aspects of the criminal law of England and Wales as the Home Secretary may from time to time refer to the Committee, to consider whether the law requires revision and to make recommendations."

The members would be: Mr. Justice Devlin, Mr. Justice Donovan, Professor D. R. Seaborne Davies, Mr. Mervyn Griffith-Jones, Sir Anthony Hawke, Mr. J. K. T. Jones, C.B.E., Mr. F. H. Lawton, Q.C., Mr. A. P. Marshall, Q.C., Sir Theobald Mathew, K.B.E., M.C., Mr. Frank Milton, Mr. A. C. Prothero, Mr. James Whiteside, O.B.E., Dr. Glanville Ll. Williams, Brigadier A. C. Willway, C.B., C.B.E. The Secretary of the Committee would be Mr. G. V. Hart, of the Home Office, and Mr. P. N. S. Farrell, of the Home Office, would be Assistant Secretary. [2nd February.

Jurisdiction (Rhine Navigation Convention)

The Minister of Transport and Civil Aviation said that he had received on behalf of the Shipping Federation, the English protecting and indemnity associations, Lloyd's underwriters, the member companies of the Institute of London Underwriters and the Liverpool Underwriters Association an assurance that, in the case of a claim for death or personal injury, they would not seek the Secretary of State's certificate under s. 6 of the Administration of Justice Act, 1956, to have a claim or question determined under the provisions of the Rhine Navigation Convention, 1868, if the plaintiff was a citizen of the United Kingdom and Colonies and the ship in respect of which the claim arose was a British ship entered in or, as the case may be, insured with them. [5th February.

Cost of Administration of Justice

Mr. Simon said that the net cost to the Exchequer in 1958-59 of magistrates' courts, county courts and the superior courts in England and Wales, and the corresponding Scottish courts, would be between £5 million and £5½ million. [5th February.

STATUTORY INSTRUMENTS

Agriculture (Miscellaneous Time-Limits) Regulations, 1959. (S.I. 1959 No. 171.) 5d.
Ayr County Council (Glen Burn) Water Order, 1959. (S.I. 1959 No. 180 (S.5).) 5d.
Import Duties (Process) (No. 1) Order, 1959. (S.I. 1959 No. 178.) 5d.
Legal Advice (Scotland) Regulations, 1959. (S.I. 1959 No. 174 (S.3).) 6d.
Legal Aid (Scotland) Act, 1949 (Commencement) (No. 3) Order, 1959. (S.I. 1959 No. 173 (C.3) (S.2).) 4d.
Marginal Agricultural Production (Scotland) Scheme, 1959. (S.I. 1959 No. 175 (S.4).) 5d.
Midwives (Amendment) Rules, Approval Instrument, 1959. (S.I. 1959 No. 162.) 5d.
Remuneration of Teachers (Primary and Secondary Schools) Amending Order, 1959. (S.I. 1959 No. 148.) 5d.
Slaughterhouse Reports (Appointed Day) Order, 1959. (S.I. 1959 No. 172.)
[These regulations are referred to in a "Current Topic" at p. 119, *ante*.]
Stopping up of Highways (County of Bedford) (No. 1) Order, 1959. (S.I. 1959 No. 163.) 5d.
Stopping up of Highways (City and County Borough of Birmingham) (No. 2) Order, 1959. (S.I. 1959 No. 130.) 5d.
Stopping up of Highways (County of Buckingham) (No. 2) Order, 1959. (S.I. 1959 No. 131.) 5d.
Stopping up of Highways (County of Chester) (No. 1) Order, 1959. (S.I. 1959 No. 152.) 5d.
Stopping up of Highways (County of Chester) (No. 2) Order, 1959. (S.I. 1959 No. 132.) 5d.
Stopping up of Highways (County Borough of Eastbourne) (No. 1) Order, 1959. (S.I. 1959 No. 154.) 5d.
Stopping up of Highways (County of Essex) (No. 1) Order, 1959. (S.I. 1959 No. 155.) 5d.
Stopping up of Highways (County of Gloucester) (No. 2) Order, 1959. (S.I. 1959 No. 156.) 5d.
Stopping up of Highways (County of Gloucester) (No. 3) Order, 1959. (S.I. 1959 No. 153.) 5d.

Stopping up of Highways (County of Hereford) (No. 1) Order, 1959. (S.I. 1959 No. 133.) 5d.

Stopping up of Highways (County of Hertford) (No. 1) Order, 1959. (S.I. 1959 No. 125.) 5d.

Stopping up of Highways (County of Lancaster) (No. 2) Order, 1959. (S.I. 1959 No. 160.) 5d.

Stopping up of Highways (County of Middlesex) (No. 1) Order, 1959. (S.I. 1959 No. 164.) 5d.

Stopping up of Highways (City and County Borough of Plymouth) (No. 1) Order, 1959. (S.I. 1959 No. 157.) 5d.

Stopping up of Highways (County of Suffolk, West) (No. 1) Order, 1959. (S.I. 1959 No. 143.) 5d.

Stopping up of Highways (County of Surrey) (No. 2) Order, 1959. (S.I. 1959 No. 165.) 5d.

Stopping up of Highways (County of Sussex, East) (No. 1) Order, 1959. (S.I. 1959 No. 158.) 5d.

Stopping up of Highways (County of Warwick) (No. 3) Order, 1959. (S.I. 1959 No. 159.) 5d.

Stopping up of Highways (County of York, East Riding) (No. 1) Order, 1959. (S.I. 1959 No. 142.) 5d.

Superannuation (Polish Education Committee and Civil Service) Transfer Rules, 1959. (S.I. 1959 No. 191.) 5d.

Town and Country Planning (County of Salop) Development Order, 1959. (S.I. 1959 No. 170.) 6d.

Wages Regulation (Industrial and Staff Canteen) Order, 1959. (S.I. 1959 No. 177.) 11d.

Wages Regulation (Licensed Non-residential Establishment) Order, 1959. (S.I. 1959 No. 150.) 9d.

Wages Regulation (Paper Bag) (Amendment) Order, 1959. (S.I. 1959 No. 151.) 6d.

Wages Regulation (Pin, Hook and Eye, and Snap Fastener) (Amendment) Order, 1959. (S.I. 1959 No. 179.) 5d.

Westminster (Councillors and Wards) Order, 1959. (S.I. 1959 No. 149.) 8d.

NOTES AND NEWS

Honours and Appointments

Mr. D. C. BAIN, M.C., has been appointed Chairman of the Agricultural Land Tribunal for the Eastern Area, in succession to the late Sir Cecil Oakes, C.B.E.

Mr. STEPHEN CHAPMAN, Q.C., has been appointed Recorder of the City of Rochester.

Mr. JOHN AUSTIN THOMAS HANLON has been appointed Deputy Chairman of the Court of Quarter Sessions for the County of Durham.

Mr. OSWELL SEARIGHT MACLEAY has been appointed Recorder of the Borough of Maidstone.

Mr. BAZIL SYLVESTER WINGATE-SAUL has been appointed a Judge of County Courts. He will be one of the Judges for the district of the Croydon County Court (Circuit 56).

Personal Notes

His Honour Judge Sir Edgar Dale has retired from the County Court Bench.

Mr. John S. Goodwin, managing clerk to Messrs. H. Owen & Son, of Louth and Mablethorpe, completed fifty years' service with that firm on 1st February, 1959. Mr. Goodwin commenced his career as a junior clerk with Messrs. Nicholl, Manisty & Co., of London, W.C.2.

Miscellaneous

DEVELOPMENT PLAN

WILTSHIRE DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Wiltshire. The plan, as approved, will be deposited in the County Hall, Trowbridge, for inspection by the public.

MINISTER'S DECISION ON DEVELOPMENT NORTH OF ST. PAUL'S CATHEDRAL

The Minister of Housing and Local Government has dismissed an appeal by the Church Commissioners to develop a site in London north of St. Paul's Cathedral for offices, showrooms and shops, but the Commissioners have been invited to submit a fresh application on lines indicated by the Minister.

Wills and Bequests

Mr. E. J. Thornley, solicitor, of Eastbourne, left £41,607 net.

CASES REPORTED IN VOL. 103

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